(25,809)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 432.

AMERICAN STEEL FOUNDRIES, PETITIONER,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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a In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1913.

No. 2157.

THE TRI-CITY CENTRAL TRADES COUNCIL et al., Appellants,

vs.

AMERICAN STEEL FOUNDRIES, Appellee.

Mr. F. C. Smith, Counsel for Appellants.
Mr. Wm. E. Wheeler, Counsel for Appellee.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

1 *Placita.*

Pleas in the District Court of the United States of America, within and for the Southern Division of the Southern District of Illinois, held in the City of Springfield, in said District, before the Honorable J. Otis Humphrey, Judge of said Court, on Tuesday the ninth day of June in the year of our Lord one thousand nine hundred and fourteen, and of the United States of America, the one hundred and thirty-eighth.

2 Filed May 18, 1914.

No. 14. In Equity.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich.

Be it remembered that heretofore, to wit: on the 18th day of May in the year of our Lord one thousand nine hundred and fourteen, there was filed in the office of the Clerk of the District Court of the United States for the Southern District of Illinois, a bill of complaint by the complainant herein, praying for a writ of injunction, which said Bill of Complaint was and is in the words and figures, following, to wit:

In the District Court of the United States for the Southern District of Illinois.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich.

Bill for Injunction.

To the Honorable Judge of the District Court of the United States for the Southern District of Illinois, in Chancery Sitting:

Your or-tor, American Steel Foundries, by Wm. E. Wheeler, its solicitor, brings this bill of complaint against the Tri-City Central Trades Council, Earl Galloway, the President thereof and
3 the other officers of said Trades Council whose names and offices are to your orator unknown, Harry McKenny, Ted Ishmann, William Thornberg, C. Thornberg, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, and others whose names are to your orator unknown, and thereupon complains and respectfully represents and alleges as follows:

That your orator is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and it — a citizen and resident of the State of New Jersey; that it has been for more than five years last past and is now engaged in the business of manufacturing certain steel products for sale upon the market.

Your orator further represents that during said time mentioned in the last paragraph and at the present time it is operating a plant or factory located in the City of Granite City, County of Madison, and State of Illinois; that said plant consists of a number of buildings and structures with machinery therein covering twenty-five acres of ground; that when operating at its full capacity its annual pay roll is in excess of One Million ($1,000,000.00) Dollars, and that the buildings and machinery contained therein are of great value far in excess of Three Thousand ($3,000.00) Dollars.

That said Tri-City Central Trades Council is a secret labor organization with headquarters in the City of Granite City, in the County of Madison, and State of Illinois composed of persons engaged in various pursuits of labor and is in effect a governing council of certain other secret labor organizations existing in the City of Granite City; that said persons composing said organization are citizens of the Sta'e of Illinois and residents of the County of Madison and State of Illinois, but that your orator has been unable to ascertain the names of the persons composing said organization.

Your orator has been unable to ascertain the names of the officers and the offices of such Tri-City Central Trades Council by reason of

its secret nature, but is informed and believes that one Earl Galloway is the President thereof.

Your orator further represents that said Tri-City Central Trades Council and the members thereof constitute a voluntary organization which is financially irresponsible, and the members of which are financially irresponsible, and that on account of the secret nature of said organization your orator is unable to say how they
4 conduct their business or how orders are transmitted or who constitutes the governing bodies of the same, further than herein set forth.

Your orator further represents that it is unable to ascertain the names of any considerable number of said Tri-City Trades Council on account of the secret nature of the same, but your orator is informed and believes that said Tri-City Central Trades Council has a large number of members.

Your orator further represents that the damage to it resulting from the wrongful acts of the defendants herein, hereinafter referred to, greatly exceed the sum of $3,000.00 exclusive of interest and costs, and that the damages that will result to it in the said wrongful acts are continued will greatly exceed the sum and value of $3,000.00, exclusive of interest and costs.

Your orator further represents that it is now engaged in the manufacture of certain steel products upon contracts heretofore entered into for the furnishing of such supplies called for in said contracts and that an inability to operate its said plant and fulfill said contracts would entail great loss to your orator far in excess of $3,000.00; that your orator further represents that prior to April 6th, 1914 the said plant of your orator at Granite City temporarily suspended operations for business reasons and that on said 6th day of April, the said plant of your orator again resumed operations and began work operating its plant to about one-fourth its capacity, and then and there having in its employ approximately 350 men, that of such men so employed there were approximately 150 men commonly known as skilled laborers.

Your orator further represents that upon the resumption at the work at its said plant on the 6th day of April, 1914 that your orator reduced the scale of wages that it had formerly been paying to certain of its employees; that such reduction met with violent opposition from the said Tri-City Central Trades Council, its officers thereof, the defendants, and the other defendants herein named and other unknown persons; that upon the resumption of operations at said time many workmen applied for work at the said plant of your orator, and that at that time and continuously up to the present time workmen in each and every department of your orator's said plant are ready and willing and contented to work therein at your orator's said plant upon terms satisfactory to them and to your orator, provided said workmen are not interfered with by the defendants
5 herein named; that such workmen who are so ready, willing and contented to work for your orator as aforesaid far exceed in number the places and positions which your orator has open for such workmen.

Your orator further represents that the said defendants have com-

bined and conspired to prevent your orator from employing skilled laborers at its plant, although such skilled laborers and your orator have agreed upon terms of employment that are mutually agreeable and satisfactory; that in carrying out such combination and conspiracy the defendants began picketing the said plant of your orator on or about April the 23rd, 1914; that the said defendants on April 23rd and since that time have caused various number of men or pickets, to-wit: five to thirty men to be stationed adjacent to the main gate of your orator's said plant, which said pickets from that day until the present time have threatened to assault, mistreat and injure various of the employees of your orator unless said employees ceased from their work; that said defendants so combining as aforesaid did on April 29th, 1914 cause two of your orator's employees to be assaulted by said pickets, one of whom was knocked down and kicked by said pickets and is now afraid to work at the said plant of your orator; that the other of said employes was assaulted by being struck and bruised about the head and was rendered insensible and that said defendants, through said pickets, threatened to kill said employee if he continued to work at the said plant of your orator; that on the 8th day of May, 1914 another employee of your orator at said plant was assaulted by certain of said pickets; that on the 13th of May, 1914 the said defendants, in combination as aforesaid, caused a gang of men in excess of fifty in number to assault nine of the employees of your orator as the said employees were leaving work from the said plant of your orator; that each and every of the employees so assaulted were satisfied and contented with their said employment and with your orator, and that no dispute of any kind existed between said employees and your orator.

Your orator further represents that the said Tri-City Central Trades Council has caused to be circulated generally throughout the said City of Granite City hand bills and posters ordering all labor to stay away from the said plant of your orator.

Your orator further represents that as a result of said picketing, the circulation of said hand bills and posters, the assaulting of
6 your orator's employees as aforesaid, the said defendants have caused it to be publicly known in said City of Granite City and the surrounding neighborhood that men seeking employment from your orator will be assaulted and seriously injured if they accept employment from your orator; that as a result thereof a number of employees of your orator, to-wit: fifteen men were afraid to leave the plant of your orator for fear of personal violence on the 14th day of May, 1914 and staid within said plant during said night, although there were no sleeping accommodations for them.

Your orator further represents that each and every of the employees now in the employ of your orator are now in fear of receiving great bodily harm from the said defendants on account of the said threats and the acts of violence aforesaid, and your orator will be unable to employ other persons to work for it and will be unable to operate its said plant.

Your orator further represents that the said defendants combining and conspiring as aforesaid, induced and caused irresponsible men whose names to your orator are unknown to come from the State of

Missouri and picket said plant and engage in said violence, and that most of said men so coming from the State of Missouri after committing assaults on the employees of your orator immediately thereafter left the State of Illinois, and other men were thereupon caused to come from the State of Missouri to the vicinity of the said plant of your orator by the said defendants, to likewise take part in intimidation and threats and acts of violence towards the said employees of your said orator.

Your orator further represents that the defendants above named also conspiring as aforesaid, have caused or induced certain other men from the State of Missouri to come to the vicinity of the said plant of your orator and to take part in threats and intimidation of the said employees of your orator, which said last mentioned men from the State of Missouri are frequently about and in the vicinity of the plant of your orator, that the names of all of said last mentioned men from Missouri are not know known to your orator, but upon injuiry your orator is informed that the names of some of them are as follows:

Benj. F. Lamb, who represents himself to be a business agent of a certain Machinist's Union of St. Louis, J. P. McDonough, who represents himself to be President of a certain St. Louis Trades
7 Council, C. E. Gerlich and Tom Churchill which said parties are also hereby made parties defendants to this bill.

Your orator further represents that if the said defendants and each of them are and is allowed to continue with their said threats, intimidations and acts of violence that your orator will be unable to operate its said plant and to fulfill its contracts and that your orator will thereby suffer great and irreparable damage.

Your orator further represents that the said defendants have caused threats to be circulated, and which threats have been carried to your orator that if the said defendants did not accomplish their purpose by intimidation and acts of violence towards the employees of your orator that the said defendants would cause the said plant of your orator at Granite City to be destroyed or burned, and that your orator has reasons to fear and does fear that unless the said defendants and each of them are restrained by the order of this Honorable Court that said defendants will attempt to carry their said threats into execution.

Your orator further represents that they have every reason to fear and do fear that in the immediate future further acts of violence towards your orator's employees and acts of violence and destruction towards your orator's property will be committed unless restrained by this Court.

Your orator further represents that it would not at this time and will not in the future have any difficulty in obtaining able, willing, satisfied and competent men to fill each and every position in its said plant upon terms mutually agreeable to the said employees and to your orator if it would not be for the said acts, threats, intimidations and violence heretofore mentioned of the defendants.

Your orator further represents that it has good reason to believe and does believe, and so charges the fact to be that unless the de-

fendants herein named are restrained and enjoined by the order and injunction of this Court, they will continue to attempt and will succeed in inducing and compelling the said employees of your orator who are now at work at its plant, to quit working, and those other workmen who contemplate working in said plant thereafter, to refuse to work.

Your orator further represents that each and every of the defendants herein named are insolvent and irresponsible and that your orator has no adequate remedy at law for the wrongs
8 and injuries which the defendants herein named are committing, attempting to commit and are threatening to commit and do to your orator, and its said business, and that your orator is without relief in the premises unless this Honorable Court will grant the injunction herein prayed for.

Your orator further represents that on account of the secret nature of the said Tri-City Central Trades Council and your orator's inability to learn the names of its officers and members and the agents and persons aiding and abetting its members and the agents and persons aiding and abetting the defendants in the wrongful acts in this bill alleged, that on account of the serious loss to your orator in its inability to operate its said plant and fulfill said contracts and on account of the grave dangers of the destruction of the property of your orator, and on account of the other matters and things in this bill set forth, immediate and irreparable loss and damage will result to your orator before the defendants herein named or any considerable number of them can be srved with notice, and before this matter can be heard on notice.

Forasmuch, Therefore, as your orator is without remedy in the premises, except in a Court of Equity, where such matters are remedial your orator prays that the said Tri-City Central Trades Council, its officers and agents, Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich, and all other persons who have aided, abetted and assisted in any of the wrongful acts and things herein set forth, are hereby made party defendants to this, your orator's bill of complaint, may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby expressly waived, and that a preliminary restraining order may be issued by this Court, without notice restraining and enjoining the said defendants and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever during the pendency of said motion, and until the further order of this court be ordered and directed by this Court to absolutely desist, and restrain from in any way or manner whatsoever by use of threats, or personal injury intimidation, suggestion of dangers or threats or violence of any kind, from interfering with, hindering, ob-
9 structing of stopping, any person engaged in the employ of the American Steel Foundries in connection with its busi-

ness or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere, and from interfering by violence or threats of violence in any manner with any person, desiring to be employed by said American Steel Foundries in its said foundry or plant, and from inducing or attempting to compel or induce by threats, intimidation, force or violence or putting in fear or suggestions of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries, and that they absolutely desist and refrain from preventing any person by threats intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of said American Steel Foundries, and that they desist, and refrain from protecting, aiding or assisting, any person, or persons in committing any of said acts, or from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries for the purpose of doing, or aiding or encouraging others in doing any of the said unlawful or forbidden acts or things, and that they desist and refrain from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, Agents or employees, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business, and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid, and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent, and from injuring or destroying any of the property of the said American Steel Foundries, and that the court will order that such temporary restraining order when so issued, be in full force and effect until such time as the motion of your orator for a temporary injunction herein may be disposed of by the Court; that your Honor will fix a time and place within the next few days for a hearing upon your orator's motion for a temporary injunction, restraining and enjoining the defendants and each of them from doing any and all of the matters and things herein asked to be included in said temporary restraining order until the final hearing hereof, and that upon said hearing that the Court will grant such motion for said temporary injunction as aforesaid, and that upon a final hearing of this cause the court will order and decree that the said defendants and each of them, be forever enjoined from doing any and all of the matters and things which has prayed for herein that the temporary restraining order be issued by this court to enjoin and prevent them from doing.

Your orator further prays that the said temporary restraining order, the said temporary injunction and the said permanent injunction, and each of them, shall be in full force and binding upon each of the defendants, and upon all other persons from and after service upon them of a copy of the restraining order, temporary injunction or final injunction of this Court, or after a copy

of such restraining order, temporary injunction or final injunction may be read to them and the same and each of them may be binding upon the defendants whose names are herein alleged to be unknown from and after the time that notice thereof is given by granting printed, written or partly written and partly printed copies of said restraining order, temporary injunction or permanent injunction at or near the said plant of the American Steel Foundries, and that your orator may have such other and further relief in the premises as equity may require and to your Honor shall seem meet.

May It Please Your Honor to grant the writ of subp*onea* in Chancery, directed to the Marshal of the Southern District of Illinois commanding and directing him that he summons all of the said defendants above named to appear and answer the said bill in accordance with the rules of this Court.

AMERICAN STEEL FOUNDRIES,
By A. WALCHER.

WM. E. WHEELER,
Solicitor for Complainant.

I, A. Walcher, being first duly sworn on his oath deposes and says that he is the Work's Manager of the plant of the American Steel Foundries at Granite City, Illinois, that as such Work's Manager he has charge and control of said plant as its head local officer; that he is authorized to and does make this affidavit for and on behalf of said American Steel Foundries; that he is fully familiar with all the business of said plant; that he has read the fore-
11 going bill of complaint and knows the contents thereof and that the same is true of his own knowledge.

A. WALCHER.

Subscribed and sworn to before me this 18 day of May, A. D. 1914.

R. C. BROWN,
[SEAL] *Clerk U. S. Dist. Court.*

Indorsed: Filed May 18, 1913, R. C. Brown, Clerk.

Motion for Restraining Order.

Filed May 18, 1914.

And afterwards, to wit: on the 18th day of May, A. D. 1914, there was filed in the office of the Clerk of this Court a certain Motion for Restraining Order, which said Motion was and is in the words and figures, following, to wit:

In the District Court of the United States for the Southern District of Illinois.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich.

Bill for Injunction.

And now comes the American Steel Foundries, complainant, herein, by Wm. E. Wheeler, its solicitor, and moves the Court to grant unto the complainant a temporary writ of injunction as prayed for in the bill of complaint filed in the above entitled cause.

WM. E. WHEELER,
Solicitor for Complainant.

(Indorsed:) Filed May 18, 1914, R. C. Brown, Clerk.

Order of May 14, 1914.

12 And afterwards, to wit: on the 18th day of May A. D., 1914, the following further proceedings were had in said cause and were entered of record to wit:

MONDAY, May 18th, 1914.

Court met pursuant to adjournment.
Present, the Honorable J. Otis Humphrey, Judge.

No. 14. In Equity.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, et als.,

Bill for Injunction.

It is ordered that the hearing upon complainant's motion for a temporary writ of injunction herein, be and the same is hereby fixed for ten o'clock A. M. on the 28th day of May, A. D. 1914, in the United States District Court Room in the City of Springfield, Illinois.

Let a Writ of subpœna in chancery as prayed issue, *a* returnable (20) twenty days after date.

And afterwards, to wit: on the 18th day of May, A. D. 1914, the following further proceedings were had in said Court in said cause and were entered of record to wit:—

13 *Restraining Order of May 18, 1914.*

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the United States District Court for the Southern District of Illinois.

MONDAY, May 18th, 1914.

Court met pursuant to adjournment.
Present, the Honorable J. Otis Humphrey, Judge.

No. 14. In Equity.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich.

Bill for Injunction.

Whereas, A bill of complaint in the above entitled cause asking for an injunction and for other relief, has been duly filed and a motion for the issuance of a preliminary writ of injunction in the above entitled cause has been filed and a date for a hearing on the same has been fixed by the Court, and a motion has been filed in the above entitled cause asking that a temporary restraining order be granted to the complainant in said bill of complaint without notice to the defendants, and the Court having examined the said bill of complaint and the affidavits attached thereto, and it appearing to the Court that immediate and irreparable loss or damages will result to the applicants before the matter of the issuance of such restraining order can be heard on notice, and it appearing to the Court that a proper case is made for the issuance without notice of a temporary restraining order against the defendants in said bill of complaint, pending the hearing of the motion for said temporary injunction.

It is Ordered by the Court that the defendants in said bill of complaint, Tri-City Central Trades Council, its officers and
14 agents and Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay

Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich and each of you and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever during the pendency of said motion, and until the further order of this Court be ordered and directed by this Court to absolutely desist and restrain from in any way or manner whatsoever by use of threats, or personal injury intimidation, suggestion of danger or threats or violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere, and from interfering by violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant, and from inducing or attempting to compel or induce by threats, intimidation, force or violence of putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries, and that they absolutely desist and refrain from preventing any person by threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of said American Steel Foundries, and that they desist and refrain from protecting, aiding or assisting any person, or persons in committing any of said acts, or from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries for the purpose of doing, or aiding or encouraging others in doing, any of the said unlawful or forbidden acts or things, and that they desist and refrain from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business, and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid, and also from entering upon the grounds, foundry, or premises of the American Steel Foundries without first obtaining its consent, and from injuring or destroying any of the property of the said American Steel Foundries.

It Is Further Ordered that this restraining order shall be in full force and effect until such time as the said motion for preliminary injunction has been decided by the Court and until the further order of this Court.

It Is Further Ordered that this restraining order shall be binding upon each and all of the above mentioned parties and upon all other persons from and after the time that notice thereof is given by posting printed, written, or partly written and partly printed copies of

said restraining order, at or near the said plant of the American Steel Foundries in Granite City, Illinois.

J. O. HUMPHREY,
Judge, United States District Court of the Southern District of Illinois.

Chancery Subpœna, Issued May 18, 1914.

And afterwards, to wit: on the 18th day of May A. D. 1914, there was issued out of the office of the Clerk of this Court a Certain Chancery Subpœna, which said Chancery Subpœna, was and is in the words and figures, following, to wit:

UNITED STATES OF AMERICA,
Southern District of Illinois, Southern Division, ss:

The United States of America, To The Tri-City Central Trades Council, Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlish, Greeting:

We Command You And Every Of You, That you appear before our Judge of our District Court of the United States of America, for the Southern District of Illinois, at Springfield, in said District, on the 8th day of June, A. D. 1914, at 9 o'clock A. M., to answer the Complainant's bill for injunction of American Steel Foundries, this day filed in the office of the Clerk of said Court in the City of Springfield, then and there to receive and to abide by such judg-
16 ment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To The Marshal Of The Southern District Of Illinois To Execute.

Witness, the Honorable J. Otis Humphrey, Judge of the District Court of the United States for the Southern District of Illinois, at Springfield, aforesaid, this 18th day of May in the year of our Lord one thousand nine hundred and fourteen, and of our Independence the 138th year.

[L. S.] R. C. BROWN,
Clerk.

Clerk's Memorandum.

Memorandum.

The above named defendants are notified that unless they and each of them shall file their answer or other defense in the office of the Clerk of said Court, at Springfield, aforesaid, on or before the 20th day after service of this process, excluding the day of such service, the bill of complaint filed herein will be taken against them as confessed, and a decree entered accordingly.

R. C. BROWN,
Clerk.

(over)

Notice.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In Chancery.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL et als.,

To the Tri-City Central Trades Council, Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich:

Take notice that the complainant will move this Honorable Court, on the 28th day of May, A. D. 1914, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the
17 within and above named defendant in accordance with the prayer of the bill therein.

Yours, etc.,

WM. E. WHEELER,
Complainant's Solicitor.

Dated this 18th day of May, A. D. 1914.

Marshal's Return.

UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division, ss:

I have duly executed the within writ by reading the same, and delivering a true copy thereof to Ted Ishman and Isaac Cook, at Granite City Madison County, Illinois, on May 18, 1914 and by reading the same, and delivering a true copy thereof, to Harry McKenny, C. E. Gerlich, Earl Galloway, as an individual, and Earl Galloway as President of the Tri-City Central Trades Council, at Granite City, Madison County, Illinois, this nineteenth day of May, A. D. 1914.

The other Defendants named therein not being found in this District.

W. H. BEHRENS,
U. S. Marshal.

Marshal's fees: $12.00.
Paid, by A. Walscher, May 18, 1914.

Indorsed: Chancery Subpoena, Filed May 23, 1914. R. C. Brown, Clerk.

And afterwards, to wit on the 29th day of May, A. D. 1914, the following further proceedings were had in said court in said cause and were entered of record, to wit:

18 *Order of May 29, 1914.*

FRIDAY, May 29th, 1914.

Court met pursuant to adjournment.
Present, the Honorable J. Otis Humphrey, Judge.

No. 14. In Equity.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY McKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich.

Bill for Injunction.

And now on this 29th day of May, A. D., 1914, comes the complainant by Wm. E. Wheeler, Esq., its solicitor and comes also the defendants herein, by James Smith, Esq., their solicitor and by agreement of the parties by their said counsel, the matter is continued to June 8th, 1914, at which time the said cause will be heard on the testimony of witnesses on behalf of the parties during which time the Restraining Order entered in this cause on May 18th, 1914, shall be in full force.

And afterwards, to wit: on the 4th day of June A. D., 1914, there was filed in the office of the Clerk of this Court, a certain Answer of defendants, which said Answer was and is in the words and figures, following, to wit:—

Filed June 4, 1914.

19 In the District Court of the United States, Southern District of Illinois,—Term, 1914.

AMERICAN STEEL FOUNDRIES, Complainant,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich, Defendants.

Bill for Injunction.

Answer of Defendant.

The Answer of the Tri-City Central Trades Council, Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. B. McDonough and C. E. Gerlich, defendants, to the bill of complaint of the American Steel Foundries, complainant.

These defendants, now and at all times hereafter saving and reserving unto it, and themselves, all benefits and advantages of the exception which can or may be had, or taken to the many errors, uncertainties, and other imperfections in the said bill contained for answer thereunto, or to so much, and such parts thereof, as these defendants are advised, it is material or necessary for them to make answer unto, answering says: Does not admit nor deny that the plaintiff herein is a corporation organized under the laws of the state of New Jersey; Does not admit nor deny, that it was, or is now a citizen of the State of New Jersey; Admits that for sometime past it has operated a plant, or factory, located in the city of Granite City, County of Madison, state of Illinois; Admits that the building and structures cover a number of acres of ground, the number of acres, these defendants do not know; Admits that the complainants' pay-roll per annum when working full capacity will probably exceed $1,000,000; Denies that the damage done to complain-
20 ant's plant by wrongful acts on the part of these defendants, or either of them, exceed the sum of $3,000; on the contrary, the complainant has sustained no damage whatsoever by reason of any wrongful act done by these defendants; These defendants admit that the Tri-City Central Trades Council, with headquarters in Granite City, is a Labor Organization, composed of representatives of various trades and avocations, but deny that such organization is a secret Labor organization: Denies that it is a governing Council for other secret organizations for no organization by it represented is

secret; that the meetings of such Tri-City Central Trades Council are open, and the minutes, or proceedings, are printed and promulgated, as are also the names of the officers, of such council; that said Central Trades Council has neither password, signs, or grips; Denies that such Trade Council, or the members who constitute it, are financially irresponsible; Admits that the said Central Trades Council represent a large number of members, that such Trade Council itself is composed of, not to exceed six, representatives of the various labor organizations—viz; Thirty-seven within the said Tri-Cities; That while representing thirty-seven different trades and callings, it has for its object, "The protection of the laboring masses, to shorten the hours of labor, the payment by employers the full current wages and to settle all disputes between employee and employer with reference to wages, etc., by arbitration instead of strikes."; Admits that Earl Galloway is the President of such Central Trades; Admits that Benj. F. Lamb is the business Agent of the Machinist Union; Admits that the other defendants herein named are representatives of other labor Unions; Denies that these defendants have committed any wrongful act, or acts, or that any damage resulted to complainant from the wrongful act, or acts, of the defendants, or either of them; Deny that they, or either of them, ever contemplated doing any wrongful act; Admit that complainant is engaged in manufacturing certain steel products, but these defendants deny that the inability to operate such plant or manufacture said steel products is because of any wrongful act on their part; Admits that on or about November 1913, complainant suspended the operation of said plant, why such plant suspended, these defendants do not know, but they do know that it was not because of anything these defendants did, or did not do; admits that on or about the 6th of April, 1914, the said
21 plant resumed operations, but just how many men were employed, these defendants neither admit nor deny; admits that on or about April 6, 1914, the complainant reduced the scale of wages; that such reduction amounted to from two cents to nine cents an hour, and included all classes of labor in such plant, except one or two trades; Admits that the said Tri-City Central Trades Council, at the request of those affected, did oppose such reduction of wages, and endeavored to have such matter adjusted by arbitration, which complainant—through its officers and agents—refused; These defendants do not admit nor deny what is said with reference to certain other workmen having applied at the said plant to take employment at such reduced wages. These defendants deny that they, or either of them, in any way interfered with such other workmen; Denies that they combined and conspired to prevent complainant from employing skilled labor at said plant; Admits that said Tri-City Central Trades Council did place certain ones on certain streets and Avenues leading to said plant charged with doing picket duty, but such ones were stationed 100 yards from such mill, and they were instructed to notify all persons, who sought to enter the plant, that there was a strike on, because of such reduction in wages, and such pickets were instructed to use all honorable means to persuade such ones to not enter such plant, and to not take the places of the

laboring men, who had gone on a strike on account of such reduction of wages; Denies that such pickets threatened assault or injury to any one seeking to enter such plant; Denies that they, or either of them, assaulted two of complainant's employees on, or about April 29, 1914. Admits that a controversy did take place about that date between a strike breaker and some persons, not connected with such Tri-City Central Trades Council, about two blocks from such plants; Denies that they, or either of them, knocked down, or kicked any person, or persons on such dates, or upon any other day or dates; Denies that they, or either of them, struck any such persons about the head, or rendered such one insensible; or that they, or either of them, threatened to kill said person, or persons, Denies that on the 8th day of May, 1914 that they, or either of them, assaulted any such party; Admits that on or about that date there was some kind of a mix up between a strike breaker and some outside parties near the Big Four Depot, which was about five blocks from the plant of complainant; but with such mix up these de-
22 fendants had nothing to do; Denies that on the 13th day of May, 1914, that they, or either of them, combined, and caused a gang of fifty in number to assault nine of the employees of the complainant; admits there was some kind of a scrap between some of the strike breakers and some parties not connected with said Tri-City Central Trades, about two blocks from such plant, in which it is said a strike breaker pulled a gun and fired; and another strike breaker pulled a knife and severely cut a bystander, but the defendants had no part therein; Does not admit nor deny, the allegations with reference to said employees who took the places of the strikers, being satisfied, or contented, with their said employment; These defendants further deny that the said, Tri-City Central Trades Council has caused the circulation throughout the City of Granite City bills and posters ordering all laboring men away from said plant of complainant through fear of bodily injury or otherwise; Denies that they have caused it to be known throughout the surrounding neighborhood that men applying for work will be assaulted; Denies that they, or either of them have threatened to assault, or injure any person accepting employment with the complainant; if such threats were made, it was by persons in Granite City, other than these defendants, or those connected directly or indirectly with the said, Tri-City Central Trades Council, and if any personal violence was used against any of such persons, it was by the said outside parties; These defendants neither admit nor deny the allegations with reference to certain ones being in fear of receiving great bodily harm, but these defendants have given them no reason therefor; Denies that these defendants combined and conspired to bring irresponsible men from Missouri to picket said plant, and engage in violence, or to intimidate such strike breakers; that the only persons coming from Missouri were officers or representatives, of the various labor organizations, and these are responsible parties and law abiding people. These defendants deny that they, or either of them, at any time, or at any place, made threats of

violence toward the employees of the complainant—those who took the places of the strikers—or made the statement that they would cause the said plant of complainant to be destroyed, or burned; these defendants neither admit, nor deny, the statement of complainant, with reference to being able to procure a sufficient number of men to fill each and every position in the said plant, but do deny,
23 that they, or either of them, have by any act, threat, or intimidation said, or done anything, to keep such employees from entering such plant, except that they have endeavored by counsel and advice to prevent such persons from entering such plant, to take the places of the men who ceased to work because of such reduction of wages; And these delegated to discharge this duty were stationed 250 feet from such plant; Denies that these defendants are insolvent, or irresponsible; Denies that the said Tri-City Central Trades Council conducts its business in a secret manner, or that it is impossible to learn the names of the officers; on the contrary, the said meetings are open, and the names of the officers, as well as the proceedings are published. Denies that there is any danger of serious loss to complainant or that there is any danger of destruction to plaintiff's property, or that the defendants, or either of them will do an unlawful act; And these defendants deny all and all manner of unlawful combination and confederacy wherewith they, or either of them, are by said bill charged without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these defendants, or either of them, to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of these defendants; all *if* which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct; and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

F. C. SMITH,
Sol. for Defendants.

Indorsed: Answer of Defendants, Filed Jun- 4, 1914, R. C. Brown, Clerk.

And afterwards, to wit: on the 4th day of June, A. D., 1914, there was filed in the office of the Clerk of this Court a certain Replication to answer of defendants, which said Replication was and is in the words and figures, following, to wit:

24 In the District Court of the United States for the Southern District of Illinois.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich.

Bill for Injunction.

The Replication of the American Steel Foundries to the Answer of the Defendants.

This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says: that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material, or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

WM. E. WHEELER,
Solicitor for Complainant.

Indorsed: Replication to answer of defendants, Filed Jun- 4, 1914. R. C. Brown, Clerk.

25 *Trial.*

And afterwards, to wit: on the 8th day of June A. D. 1914, the following, further proceedings were had in said Court in said cause and were entered of record to wit:—

MONDAY, June 8th, 1914.

Court met pursuant to adjournment.

Present, the Honorable J. Otis Humphrey, Judge.

No. 12. In Equity.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL et als.

Bill for Injunction.

And now on this 8th day of June A. D. 1914, comes the complainant in this cause by Wm. E. Wheeler, Esq., its solicitor and comes also the defendants by Frank Smith, Esq., their solicitor and this cause coming on to be heard upon the bill of complaint of complainant, the answer of the defendants, and the Replication of the complainant to said answer, and the Court after hearing a part of the evidence in said cause, the hour for adjournment having arrived, the further consideration thereof is postponed until 10 o'clock A. M. tomorrow.

And afterwards, to wit: on the 4th day of August A. D. 1914, there was filed in the office of the Clerk of this Court a certain Abstract of Evidence, which said abstract of evidence, was and is in the words and figures, following, to wit:—

26 COMPLAINANT'S TESTIMONY.

Testimony of A. Walcher.

A. WALCHER, testified as follows:

I am thirty-five years of age; am the Works Manager of the American Steel Foundries at its Granite City, Illinois plant. The American Steel Foundries is a New Jersey corporation authorized to do business in this State.

When this plant is in full operation we employ about sixteen hundred men; when we resumed work on April 6th, 1914, we employed about three hundred men.

As Works Manager I have complete supervision of the operation of this plant, and I am the head local officer.

On April 24 I made application to the Mayor of Granite City for protection with reference to the matters that are alleged in this bill. That protection was promised me. On about May 4 I made application to the Sheriff of Madison County for protection, the Sheriff

promised to investigate the mat er but we got no further reply from him. Neither the Mayor nor the Sheriff afforded us protection.

The only personal knowledge I have of the acts of the defendants relates to the picketing which started about April 24 and continued until the night of May 18th. I have never seen any of the assaults.

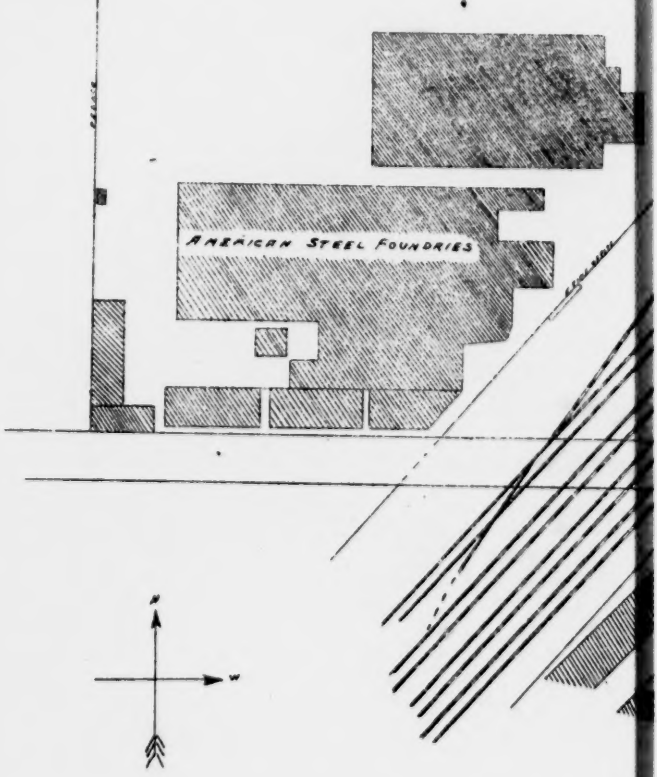
I am familiar with the complainant's Exhibit "A" and with the territory represented by it. It is substantially correct. The shaded portions represent the buildings within the property. The lines marked "Fence" represent the fence surrounding our property. The fence along the south side of the property is co-incident with the north street line. The parallel lines between the Wabash Depot and the southwest line of the plant represent the main line tracks of the Wabash, Chicago and Alton, Big Four, C. P. & St. L. and the switching line of the St. Louis Merchants Bridge Terminal. Neideringhaus Avenue terminates at the tracks and from there eastwardly is known as Pacific Avenue. (Exhibit A, introduced in evidence.)

(Here follows diagram marked p. 27).

No. 432.

American Steel Foundries
v.
The Mississippi City Central Trades Council et al.

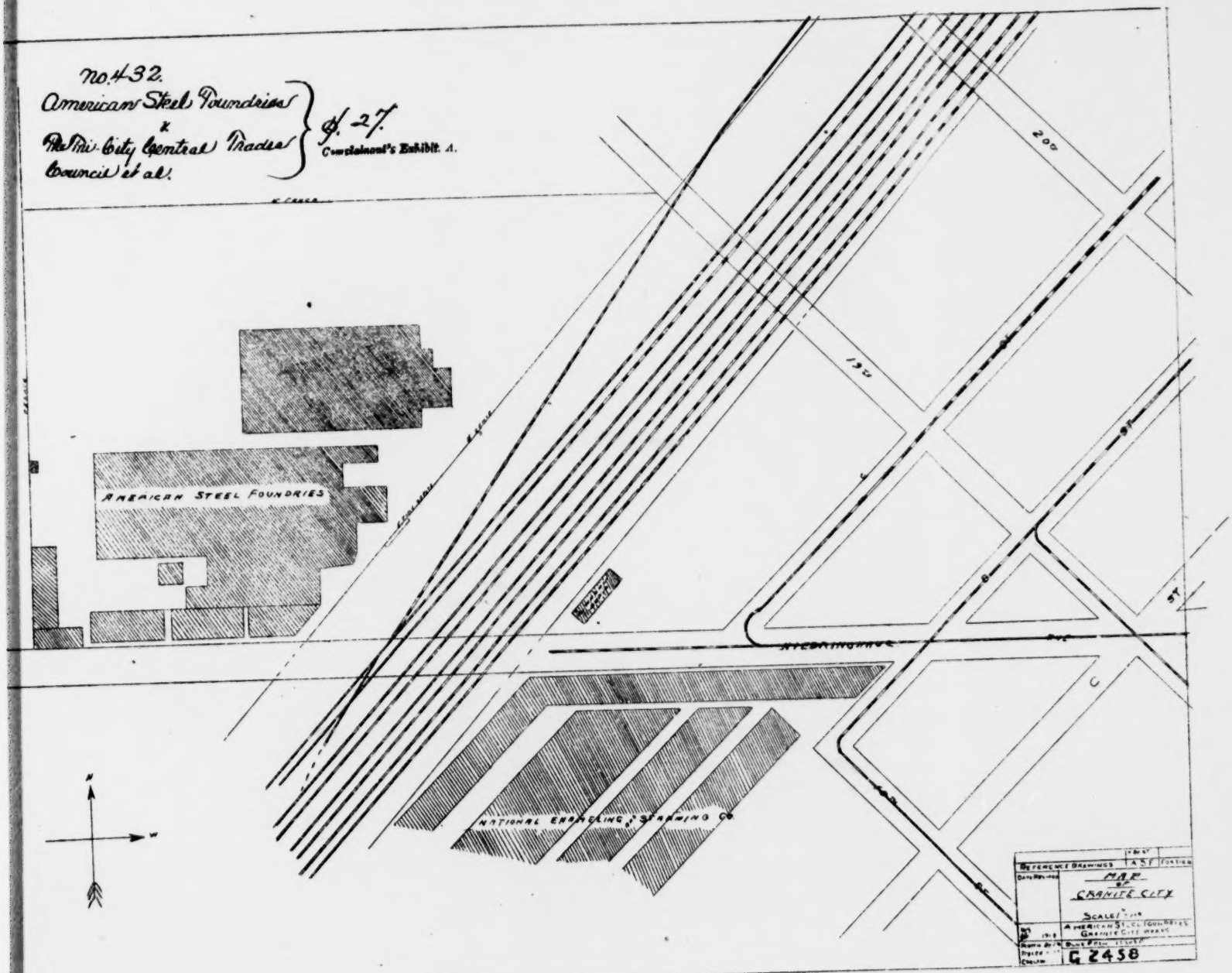
Complainant's Exhibit No. 27.



No. 432.

American Steel Foundries
x
The Granite City Central Trades Council et al.

Ct. 27.
Complainant's Exhibit A.



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28 & 29 The distance from the timekeeper's office to the Wabash Depot is approximately one hundred fifty yards.

The defendant's that I have seen picketing the plant are Ted Ishman, Isaac Cook, Harry McKenny, Tom Churchill, Clay Holmes, Eddie Roach, Beni. F. Lamb and C. E. Gerlich. These men were

TURN PAGE

[illegible] sorary quarters as we fitted up about the lat-er part of April. These consisted of about one dozen cots and blankets placed in the testing laboratory plant. Men slept in the plant from the the first of May until the 16th or 18th of May. These varied in number from three to four men up to as high as twenty-eight.

I am familiar in a general way with the employment of the men at the plant. We have an Employment officer under my charge and supervision who employes the labor. Prior to the calling of the strike we had no trouble in securing labor at the plant. The plant was opened on April 6th, after a shut down on November 26th, 1913 on a 25% basis of its rated capacity. We began hiring a few men about April 1 in order to be ready to open on April 6th, and we experienced absolutely no difficulty whatever in hiring all the labor we wanted. There has been an abundant supply of labor and is at this time, owing to the general business depression throughout our line in the country.

If we were to suddenly shut down, owing to the nature of our business, our losses might be very heavy. We operate open
30 hearth furnaces for the production of steel. These furnaces must be maintained at a certain temperature and if they were shut down they would be very apt to fall in. The damage as the result of one of our furnaces falling in may be anywhere from $3,000 to $4,000 and may be $5,000. Aside from the furnaces if we were shut down flat for a month our loss would be in the neighborhood of $15,000, and a shut down for a week would be in the same proportion.

I have seen Complainant's Exhibit "B" before and have seen other copies of it posted about the plant, particularly around the Wabash Depot and principal streets leading to the plant. I do not know who posted them.

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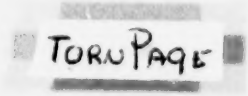
Complainant's Exhibit "B" introduced in evidence which is as follows:

COMPLAINANT'S EXHIBIT B.



At no time between April 1, 1914 and the time the restraining order was issued was either the defendants, McKenny, Galloway, Thornberg (William), Holmes, C. Thornberg, Burton, Roach, Aldridge, Lamb, Ishman, McDonough or Gerlich in the employ of the American Steel Foundries. The defendants Cook and Churchill were the only ones in our employ during that time. They left our employ about April 22nd without having any talk with me.

As Works Manager threats had been carried to me by third persons from the pickets to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end.

31 Cross-examination:

From November to April all the furnaces had been shut down. When we closed down in November we had 1,600 men employed. These furnaces were destroyed because they were shut down. A furnace is almost invariably destroyed every time it is shut down. When we started up we used only one furnace and that had to be rebuilt. It was re-built in anticipation of our requiring it, and on account of the shut down. A new furnace does not deteriorate. If it is in good condition you would not have to rebuild it. The one we light up we had to re-build, and as we come to the others we will probably find we will have to re-build all of them. We are now at work re-building one of them.

I asked the Mayor of Granite City once for protection. His name is M. E. Kirkpatrick, and about April 28th I forwarded him a written communication requesting protection. I did not see him personally at that time. On May 4 I notified Simon Henry, the Sher-

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iff of Madison County through Mr. W. R. Glasgow, my assistant. I wrote a letter and it was delivered to the Sheriff, in person, by my representative. I asked for protection for our plant and employees, to keep the pickets from assaulting our men. I saw none of the men assaulted. The pickets did not come inside of the fence to my knowledge. At times they were within twenty feet of the plant. They were trying to prevail upon the men from entering the plant. I didn't see all of the defendants acting as pickets; they were seen by others. I didn't see them all personally. I didn't see, or failed to recognize William Thornberg, C. Thornberg, C. L. Burton, John Aldridge, F. P. McDonough. Some mornings I may get to the plant at 6:30 other mornings I may not get there until 10:00. I go in and out of the plant at noon and ordinarily stay there until the plant closes down at night. I saw no assaults committed; I saw no disturbance.

Before we opened up in April we reduced the wages in some departments from 2 to 9 cents an hour, a good half of the departments we did not reduce. The Tri-City Central Trades Council sent a Committee to me to arbitrate the wage question and I refused to arbitrate. On April 20 a delegation of some ten or twelve men came as a Committee from the Tri-City Central Trades Council. Galloway was admitted and stated that he understood wages had been reduced and a Committee had been appointed to confer with
32 the officers of the Company. I asked him if this Committee were our employees at the present time and he replied that he didn't think they were. I told him that it was rather peculiar, I have never heard of any complaint from any of our employees and was very much surprised. I informed Mr. Galloway we could have no dealings with outside Committees; we run an open shop; don't recognize organized labor; merely deal with our employees. Advised Mr. Galloway if any of our men had any complaint to make in regard to wages and working conditions I was willing to listen to them as often as may be necessary. We have run an open shop about the last ten years and have never recognized labor unions and refused to deal with Galloway because he was representing a labor organization. The injunction was applied for on the 18th of May and our refusal to arbitrate was prior to that time probably about April 20th.

We had no place in the plant for the employees to sleep, we put in a dozen cots and one man slept on a cot, and the balance of them slept on floors and benches, wherever they could find a place to lie down.

The plant is losing money right along. There is no claim we have lost money by what the defendants did but we have lost money therefrom. Our machinery has gotten in very bad shape, we have been compelled to employ men to operate various machines which were not as efficient as the men we had there prior to April 22, with the result that a good deal of machinery has been damaged. We had no trouble with our class of men from April 6th to April 22nd but the defendants have scared out our men. Because of picket

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duty the Company has lost money. The defendants have done no direct damage to the plant.

I was told that the statement had been made that the plant was going to be burnt. The plant is of various construction, some combustible and some non-combustible. The framing of the building is wood in a great many cases, and one of the large buildings is an entire wood building.

Redirect examination:

Other men besides the defendants were engaged in picket duty around the plant. These pickets would stand around in groups of eight or ten, two and three groups. Some of these I recognized as machinists, others as workmen that had worked around Granite City at various times, various outsiders.

33 *Testimony of Steven Hafner.*

STEVEN HAFNER, testified as follows:

I am thirty years old and at the present time working at the Granite City plant of the American Steel Foundries running an electric crane. I started to work April 29th. On April the 30th as I came to work to the plant I go down on Neideringhaus Avenue along side of the Wabash Station. I saw Churchill, Gerlich, and Cook on Neideringhaus Avenue that day. They was out on the walk about ten feet away from the track from the station there and jumped in front of me. They didn't say nothing, only Tom Churchill say, "You can't go this way." And I said, "Yes, I can." And he jumped on me and beat me up; I didn't see the two fellows coming behind; Tom Churchill jumped in front of me and stopped me and I didn't see the other two men come at all, and all at once I got hit in the face and all over, and then I went over to the cars; I couldn't hardly stand and braced up in a car; the time I was going over to the cars one fellow his name is McKenny he was going to get after me again and I said I wouldn't go into the plant; I was going back home; I was going to brace up over in the cars. I went home; couldn't go into the shop any more. I was feeling awfully dizzy all day long; still dizzy yet sometime on account of them hitting me. I have seen the picketing. I don't know the names of all the fellows. I saw McKenny, Holmes, Ishman, and Cook that I know.

Cross-examination:

It was about two hundred yards from the plant where I was stopped. They not only spoke to me, they knocked me all over. Churchill, McKenny and Cook spoke to me and they hit me too. Never said anything until I got hit; the first thing they knocked me down. I never saw McKenny and he jumped on me from the back; never noticed anybody coming and jumped on me from the back and as hard as they could. They knocked me all over.

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On a different day another man followed me all the way to Eighteenth Street he, says, "Now we got you." W. J. Hartbeck he said, "Now we have got you"; you are by yourself; we got you, we will fix you." I said, "I ain't doing nothing wrong; all I will do I will do the same thing I did before." They let me go.
34 Patty Hackert was talking to them and he said, "He is all right, don't bother him." He was just going to get me on the side so that nobody could see it and then they were going to give it to me. He didn't hit me. Churchill, McKenny and Cook all hit me, they knocked me down. They hit me in the face; I don't know where they did hit me; couldn't see fast enough how they did come on me then I went between the cars and braced up a little and then I went back home.

I worked at the plant about six years prior to the time it closed down.

Testimony of Frank Hedstrum.

FRANK HEDSTRUM testified as follows:

I am working for the complainant and commenced work April 3, 1914, and was working there on May 8, 1914. I know Ishman and McKenny. On May 8th I saw them on Niedringhaus Avenue by the Wabash Depot. A bunch of about fifteen or twenty of them came in the direction of four or five of us calling us vulgar names and we went on past the Depot on the left hand side of the shop on Niedringhaus Avenue. The men at the Depot followed us and commenced assaulting us. One of them hit me on the hand with a rock. As a result I was in a dazed condition and had to have a Doctor care for my hand. On May 18 Ire Crawford and myself were walking to work about five o'clock in the evening.

(Complainant's Counsel states to the Court that while the restraining order was issued on the morning of this day and this assault occurred at five o'clock, yet complainant did not claim the defendants had notice thereof.)

We were coming down the street when we were intercepted by some men at the corner of 21st and B Streets, about 4½ blocks from the plant. There were about twenty-five men in the bunch. Some man whose name I do not know said, "Don't go in to work." And the next thing I remember I found myself getting up and nobody around except some school children and Crawford. Crawford was getting up from the ground where he was knocked unconscious as well as myself, and this gang of twenty-five men were all gone. I was rendered unconscious by being struck over the head with some blunt instrument. The right side of my face was swollen from being hit with something on the jaw, it was all swollen and
35 sore down to my collar bone. My head was swelled and sore also; there was a knot about the size of a pigeon egg on the side of my head.

On the morning of May 14 I saw Ted Ishman close to the Wabash

LOSE IN CENTER

Depot, he said to me, that we would continue going into work until we got our heads knocked off.

Cross-examination:

I didn't recognize any of the men that hit me. I don't know who assaulted me. I know Ed Dangles was there but I was hit from the rear.

Ishman told me that somebody would get their heads knocked off when I was coming out of the plant from my work.

Redirect examination:

On May the 8th McKenny and Ishman were in the crowd that assaulted me.

Testimony of Ira Crawford.

IRA CRAWFORD testified as follows:

I have been working for the American Steel Foundries about six or seven weeks, running a crane on the night shift. On the morning of May the 8th as I was coming from work I saw a bunch of about twenty men near the Wabash Depot. I recognized Ishman and Dangles in the crowd. The crowd followed us around the depot calling us vile names and the next thing I knew there was a fight come off. They hit us, struck me in the back with something and on the arm, and struck at me at different times.

On May 18 I left the house about a quarter to five o'clock with Hedstrum. The only man that I recognized in that crowd was Dangles. They jumped on to us and beat me up with a club of some kind; hit me on the head; hit me on the back with a brick and I don't know what else. I was knocked unconscious and my head cut open. I don't think I was unconscious long. When I came to I saw men running near C Street towards town. As a result of this assault I couldn't work for two weeks and was treated by a Doctor. My face was cut and my head cut and bruised. My left arm was so I couldn't use it and it still bothers me.

36 I saw McKenny on May 6th. He stated to me as near as I can remember, "You will get your damned head beat off, or something of the kind if I kept on going in there."

On May the 9th Ted Ishman came out from the Wabash Depot and said to me, "If you fellows keep on going there you will get your head beat off."

Cross-examination:

In the fight on May the 8th the only two I recognized in the crowd was Ishman and Dangles. I don't know who struck me. I saw the fighting and saw Ishman and Dangles fighting.

In the fight on May the 18th the only one I recognized was Dangles.

Testimony of W. C. Quinn.

W. C. QUINN testified as follows:

I have been working for the American Steel Foundries since the first of May. I know Ted Ishman, Tom Churchill, and Benj. F. Lamb.

When I finished my day's work on the night of May the 13th I and eight others left the plant about eight minutes to six and walked out Neideringhaus Avenue across the track and past the depot. We passed Ted Ishman and Galloway at the depot with four or five other fellows, and they said, "There they go," and at the same time Galloway drops his hand and we walked up the street. We walked up the street two or three hundred feet and a gang of men about sixty-five or seventy of them came around the corner from behind a brick pile. From the other side of the street was about a likewise number; at the head of the bunch on this side of the street was Hartbeck, and just as we got from about twenty feet from the street car track this fellow hit Kelly in the face and at the same time he says, "There you scabbing s—— of b———; don't let him get away from you;" and tried to cut across the field and they Shillalahed me with bricks and likewise the rest of them. The bunch that was at the station came from behind. I was struck by these brick bats in too numerous places to mention. I was struck mainly on the back and on the side of the left temple, and on the right jaw, also on the arms. I was knocked unconscious for about fifteen or twenty minutes and
37 when I regained consciousness all of these men had disappeared. As a result of this I couldn't perform my duties for the next week and have had a continuous headache ever since. I was never troubled with headaches before.

On May the 6th I saw Ted Ishman on the corner of Eighteenth Street and he told me if we continued to work down there we would get hurt. He said there wouldn't be any of us go in there the following Monday if they had to kill us all. I started sleeping in the plant on the night of the 14th and have slept there up until last Monday. I slept on a board the first couple of nights and then on a cot. I slept in the plant because I didn't like to battle my way through all the time. I was followed continually across the river and on this side of the river too. On one occasion I was followed by a man whose name I do not know and I caught six different street cars trying to escape and finally I caught a Taxicab and got away from him. On the following day I met this same fellow and two others on the corner of fifteenth and Chestnut Streets in St. Louis. This fellow came in front of me and two fellows behind me and just as he got to me he said, "This is the scabbing b——d" and struck at me, and the two fellows from behind rushed up at me and I had to defend myself and I knocked one man down and got the other fellow down, and the other fellow ran.

Cross-examination:

I did live in St. Louis, I am now boarding in Granite City. In the fight on May the 13th I recognized Ishman and Galloway they are both present in court. I should judge there were about one hundred fifty men in that crowd that attacked us. At that time Ishman was the only man in the crowd that I knew. The fellow that followed me in St. Louis followed me around until ten o'clock at night. I don't know who these one hundred fifty people were. After the fight was over Hartbeck was the only one who I then recognized. I do not know who struck me. Hartbeck struck at me but didn't hit me.

Redirect examination:

The other man that I now recognize who was standing at the depot on the day of the big fight besides Galloway was Mr. Lamb.

38 *Testimony of Frank Melton.*

FRANK MELTON testified as follows:

I went to work for the complainant on April the 13th, worked about ten days and was off then until the 7th of May when I again went to work. That day I went across Neideringhaus Avenue on the south side of the plant to Compton's Restaurant; while I was in there this fellow here (pointing out defendant Gerlich in the court room) come up to me. He was the leader of these fellows. Guess there were twenty of them in there while I was eating dinner and they surrounded me. He came up and commenced to bulldoze me, and said, "Say you, don't you know there is a strike on here?" He told me if I didn't stay out of that shop they would beat my damned head off and I sat and eat awhile, and I told them I thought I would quit that night beings they were getting so strong with it, and they kept getting louder all the time and getting closer to me all the time. When I told him I would quit that night, he said, "You won't do it no such a dam thing; you have seen your last time in that shop. You are quitting right now." There was a heat to come down in a few minutes; they had me tied us and wouldn't let me in; I was pouring man. I told them I had a motorcycle in the shop and would have to get that out, so they gave me fifteen minutes to get out of there, and on account of their threatening attitude I was afraid to go back there to work. I went to work and worked one day after that and that night they jumped me in East St. Louis right near my home. I don't know who jumped me. One of them said, "There is that crane man at Granite City." One threw a brick but never hit me, and one ran over and knocked me down; don't know what it was, a hammer or something he had in his hand; hit me in the back and knocked me down; I was laid up for over a week; couldn't use my back, and struck me in the face and I was cut on the arm. This happened about the 14th of May. I don't know who struck me, it was done after dark and I couldn't very well recognize who it was.

I was satisfied with the terms of my employment and I am willing to work there, but I am afraid to work.

Cross-examination:

I live in East St. Louis, I don't belong to any of the labor organizations. This place where I was eating lunch is across the street from the plant. I recognized Gerlich in the crowd and that
39 fellow sitting over there (pointing to Roach) was also in the crowd. They didn't strike me. I had to either quit or get my head knocked off right in there. They would have knocked my head off if I hadn't went right on in. It was about a week afterwards that I went to work and I just worked that one day and I quit on account of being hurt that night in East St. Louis. I don't know who hurt me.

Testimony of William Francis.

WILLIAM FRANCIS testified as follows:

I work at the Granite City plant of the Complainant have worked there the last seven years. I am the chain boss. I know Harry McKenny, Ted Ishman, Wm. Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, John Aldridge, Ike Cook. I do not know J. P. McDonough and C. E. Gerlich. These men that I have stated I have known I have seen around and near the plant in the latter part of April and May standing within thirty feet to two hundred feet of the foundry. I have seen them in crowds of ten, or fifteen or twenty with other men but could not call their names.

When I left the plant on the night of April 29 I saw Tom Churchill about eight feet from the depot with ten or twelve other men among them was Wm. and C. Thornberg. They were all in the gang together. Churchill said, "If we didn't stay out in a descent manner they would make us stay out.

On the following morning I went to work with Steve Hafner. We met Thornberg and Churchill and they took Steve away from me and kicked him and beat him in the face with their fists and feet, they then ran away.

I saw the Blacksmith Freddy that morning. I saw him get whipped; knocked down. He come on the north side of the depot and Churchill, the two Thornbergs and three or four more fellows were on the south side. The- headed him off around the car and they commenced whipping him and knock him down and beat him. There were about nine or ten of them in the assault. Freddy was unable to work and went home.

On the 13th of May there was trouble on Neideringhaus Avenue about a half a block from the plant. There were nine men with me and I seen a world of men coming three directions. Some from behind the stamping works, South of the stamping works;
40 some was coming north and when we passed by a gang at the depot we were in the middle of the three gangs. The- com-

menced throwing bricks. I recognized two or three standing around there. Bricks was being thrown so fast I got behind a post. As I was going by the depot I recognized two or three of them. I recognized Churchill, Hartbeck and Galloway. Galloway was at the depot. A bunch of these men came in from behind us after we got past the depot. I saw workmen with me that were struck with bricks. A man got knocked with a brick; one got hit in the ear with a brick. Mr. Quinn got knocked flat down unconscious. Mr. Patty over there got knocked down. It lasted about ten or fifteen minutes and then the gang run away in different directions. I got behind a post and didn't get a scratch.

At the beginning of this trouble I saw the fellows do picket duty around there. Saw several in gangs of twenty or twenty-five and within thirty feet of the plant's gate.

Cross-examination:

I can recognize a lot of them that were doing picket duty. They were from 30 to 200 feet from the Gate. Stopping people from coming in the gate. They told me not to go in but I kept going in; they did not stop me; some days I Didn't come out and some days I did. I got arrested for disturbing the peace; they were disturbing my peace. That was for the part I took in the fracas. I am under a peace bond now. This big fight was about two hundred yards from the plant. I was so badly scared that I couldn't recognize much. I saw the Thornbergs in the fight; saw them throwing bricks at the men coming from the works.

Freddy was about eighty or ninety feet from the works when he was assaulted. Churchill and McKenny assaulted him. I don't know what Freddy said. I was about twenty feet from them. They did not molest me. Freddy didn't strike them.

Churchill and Hartbeck was in the fight on May the 13th. Don't know how many men were there; there was a world of them. I saw this fellow here throw a brick, I recognized him and the two fellows before the bid crowd come up there but the other gangs hadn't met us. And the crowd at the depot came up behind.

41 *Testimony of J. E. Bell.*

J. E. Bell testified as follows:

I am working for the Steel Foundries as a crane man. I was working there on the 13th of May. On leaving our work eight or nine of the workmen went up Niedringhaus Avenue together. A bunch of men came from behind the stamping works, one came back of us and one from the side; kind of corralled us, threw bricks and every thing at us. I was struck in the back and arms with bricks. About the eighth or ninth of May I had a talk with McKenny. He told us if we didn't quit working they would cripple us so that we couldn't get there the next Monday morning. I have been satisfied with the terms of my employment there at the plant.

A hand bill like Exhibit "B" was handed to me by Harry McKenny. I do not belong to the craneman's union or to any labor man's union.

On the 13th of May the men chased me clean up to the Police Station. I should judge there was about two hundred in that crowd.

After McKenny told me I had better quit working I continued to work at the plant. I was kept inside for over a week. If the pickets would ask you not to work it would be all right, but they started to use brutal force, one tried to stab me.

Cross-examination:

I began work on May 5th and was assaulted on the 13th. I have worked every day. Been going in and out except for a week I stayed in the plant.

Testimony of William Francis.

WM. FRANCIS, recalled:

That fellow there (pointing to Earl Galloway) threw a brick and hit this man in the ear.

Recross-examination.

I have known Galloway five or six months. I am sure Galloway was there. I am sure I saw him. I saw Galloway throw a brick.

He threw it at that fellow there, sir.

42 *Testimony of Edwin Baker.*

EDWIN BAKER testified as follows:

I run the Royal Hotel in Granite City, I draw my trade mostly from the working people, and some of the employees of the complainant board with me. I know who the colored porter is that works for the complainant, he comes to my place for meals. On May 9 he came to my hotel with an order for two meals from officials at the complainant's plant. I packed them in two baskets and a bucket of coffee and handed them to him. He left my place and in about fifteen minutes came back as hard as he could run; ran in the restaurant and threw kitchen where I happened to be. He did not have the baskets with him at that time.

About three minutes after the porter got there three men came into the place. I didn't know any of them; the spokesman said his name was Harris. He asked me if I was feeding men from the American Steel Foundries. I told him that I was and they told me if I didn't quit feeding them they would ruin my business and see that I didn't get any more union men.

Testimony of O. P. Floyd.

O. P. FLOYD testified as follows:

I am the employment agent of the complainant. My office is located so I can look across the railroad tracks from my office. I know by sight Roach, Gerlich, Cook, Churchill, Galloway and McDonough. I have seen all of these men engaged in picket duty around the plant, between the plant and the Wabash and at the Wabash Station. I have seen Roach, McKenny and Churchill within ten or twelve feet from the entrance of the plant. I have seen them approach men by stepping in front of the man and intercept the man.

I know the colored man, the porter at the plant. I sent him to this hotel to get those meals. I saw him coming back to the plant. As he was on the tracks coming to the plant he had two breakfasts I sent him for in a couple of ordinary market baskets. At this point he was stopped by Churchill, Gerlich and two other men whose names I do not know. They forcibly jerked the baskets away from him and threw them on the tracks and kicked the contents of the baskets over the tracks and broke up the dishes and the negro went back the other way. He didn't come to the plant at all.

43 As Employment Agent I employ all the laboring men, mechanics. The workmen affected by this picketing are the machinists, cranemen and skilled labor. When we started our plant on the 6th of April I had plenty of applicants for such work, more than I could use. From the 24th of April and up to the time of the issuance of this restraining order the situation changed very materially; not able to get that kind of men; they would ask for protection and we could not give them any protection, consequently we couldn't get them to work. The rest of the plant cannot operate without the cranemen and these skilled laborers. I have been the Employment Agent for upward of two years.

Cross-examination:

The Wabash Depot is about one hundred or one hundred and fifty yards from my office. I am located at the main entrance; I am in my office from seven to twelve in the morning, and from six thirty to seven thirty, eight, nine or ten o'clock at night. I didn't see any of the particular attacks that are mentioned. All I saw was the pickets talking to the men and the men being stopped. I don't know what means were used. The pickets were stationed between the Wabash Depot and the plant.

I know that Churchill and Gerlich stopped the porter with the meals. Churchill and Gerlich's acts constituted an assault. They didn't strike the negro but they forcibly jerked the basket away from him and kicked the contents down the track. He was not struck. This was probably two hundred and fifty or four hundred feet from the plant.

Testimony of Valley Crabtree.

VALLEY CRABTREE testified as follows:

I have worked for the complainant continuously since March 29th. On May 8th I left my work about 7:15 in the morning to go home; Hedstrum and Crawford fellow employees were with me. As we were going on Neidieringhaus Avenue near the Depot I met a bunch of about fifteen assaulters. I only knew Ishman and Warden in the bunch. They come up in front of us and called us vile names; whether they were addressed to me or not I don't know; never had anything said to me before. They followed us in around 44 the Depot and the next I knew Mr. Ishman and another fellow struck me with their fists. The fight started and lasted just a few seconds and the policemen came along and arrested us three employees, Mr. Ishman and another gentleman.

I had no other trouble. I am a furnace helper in the plant and satisfied with my employment there.

Cross-examination:

I began working March the 29th getting the furnaces ready. I belong to none of the unions represented by the Trades Council. This trouble happened one hundred and fifty yards from the plant. The men followed us around the Depot and the first I knew about a fight was when I got hit then the policeman arrested us and I was taken to the station. I had a trial but came clear. I know Ishman who struck me but I don't know the other fellow who struck me. I know another fellow by the name of Gangles who was in the crowd. I have gone in and out of the plant every day and have not been molested except that one time.

Testimony of Thomas Cantrell.

THOS. CANTRELL testified as follows:

I am working for the complainant, starting there May the 13th. I left the plant that night about 6:10 o'clock and when I got down about a half a square from the Wabash Depot it seemed to me there were about two hundred men surrounded us. I recognized one man, Ted Ishman. I saw him throw a brick and strike Mr. Stark with it. Stark was covered with blood; I took him across the street and met four other guys but I can't identify them; they started hurling brick at me; some hit me on the back and I made my get-a-way towards the plant. I stayed in the plant until about eight o'clock and then four officers escorted us to the Royal Hotel. I went back to work and the next morning and for five or six days slept in the plant. I slept on tables until they got cots.

Cross-examination:

When I went to work at the plant I didn't know there was a strike on. I am a pipe-fitter, belong to no union and work in open
45 shop. I saw Ishman right at the curb when the fight started. Mr. Stark was walking along and Ishman threw a brick at him and struck him in the ear and Stark and I went back to the plant together. I quit work on the 28th. After the assault I slept in the plant five or six days and after that I kept coming out and going home, but I was not molested. I wouldn't give them a chance; I wouldn't take the chance to get that close to them. I was hit on the back three or four times with rocks; when I came out of that plant on the 13th, about 4 P. M., and saw a crowd; the scrap took place after we crossed the Wabash Tracks; I know Ishman threw rock, I am positive. I was right there and I saw Hartbeck pitching in and doing all he could. I went in and out from the 13th to the 28th except for five or six days we remained in the plant.

Testimony of Joseph Hoffman.

Joseph Hoffman testified as follows:

I am the Assistant Foreman for the complainant and have been for fourteen years. I am acquainted with Harry McKenny, Ted Ishman, Tom Churchill, Clay Holmes, Isaac Cook and Eddie Roach but am not acquainted with any of the other defendants. I have seen these men picketing, mainly around the Wabash Depot a hundred and fifty yards from the plant; on one occasion I saw them within one hundred feet from the plant. The Wabash Depot is near Neidringhaus Avenue which is one of the main streets leading to the plant. The picketing started about April the 24th.

As a general rule Assistant Foreman are not involved in these strikes. I had a talk with Churchill and told him that word had come into the shop that a crowd was going to get me; they were laying for me on the outside. He said being as I was Assistant Foreman he would take it up that night with the boys and see I wouldn't be bothered. I was never bothered.

Cross-examination:

One hundred feet is the nearest I ever saw the pickets to the plant. All I saw them do was talk to the men, I saw no assaults. In my talk with Churchill he assured me that nobody would molest me, and I wasn't molested. I worked there every night and only saw the men stopped.

46 *Testimony of Arthur Knott.*

Arthur Knott testified as follows:

I am a craneman working for the complainant; started to work April 27th. I know Churchill, Roach, Lamb, McKenny, Ishman and Holmes.

On May the 8th as I left my work that night and was walking along Neidringhaus Avenue there was a crowd of about ten at the Wabash Depot; Churchill, Roach, McKenny and Holmes were there. I had a conversation with them; they asked me where I was working at and I told them, and they told me I had better quit working there or I would get my head knocked off.

On the morning of April 28th as I was leaving the plant I saw Ishman and Sanders and one or two other men whose names I don't know. One of the men handed me one of those hand bills (Exhibit "B"). They told me I had better quit working there or I was liable to get hurt.

About May 4 Tom Churchill, Harry McKenny and two other men were sitting on the Railroad Track about fifty feet in front of the Timekeeper's Office. McKenny tried to stop me and I told him that I didn't want to talk to him and they blocked my way, and Tom Churchill came from the back in a threatening manner and I pulled my pocket knife on them and they left me pass in the shop. They called me a scab and cursed me and made threats that they would get me.

Cross-examination:

I had worked for the Complainant about two years ago. It was on May 4 I pulled my knife (witness shows knife to counsel) I never told them anything. They tried to keep me from working; advised me not to work. When they handed me one of the hand bills they didn't strike me. I have been working ever since April 27th. I haven't been assaulted once. At nights the Company has been taking me home in a buggy for the last two weeks.

Redirect examination:

I have been going in by buggies and unusual routes, taking country roads and back fences or in any way I can get in to keep from getting hurt.

Testimony of Adolphus Hileman.

47 ADOLPHUS HILEMAN testified as follows:

I started to work for the complainant along the first part of April and quit working April 25. On the evening of April the 24th I saw quite a crowd, Lamb and Ishman was with them. They asked me to stay out, that there a strike on there; I told them I would go in and pour the heats and then come out; and a fellow said, "Go on in and scab them and we will catch you when you come out. On the evening of April 24th I was met by Ishman, Holmes and Paddey about six blocks from the plant. They said the machinists called a meeting and decided to get everybody that went in there and knock their blocks off and I had better stay out. Paddey said the machinists would do that; they didn't say they would do it. On April 25 I saw Horace Howard and Henry McKenny; I

was on the inside of the fence talking to them through the fence. When I first saw them I was sitting on the water tank by the fence about forty feet from the gate. They told me I didn't do the right thing by staying in there and scabbing; I ought to come out. I quit working there that day because they made those threats and I didn't care to be in the trouble if there was any trouble. I was satisfied with my employment, satisfied with the terms of it and had no trouble with the Company at all.

Cross-examination:

I was working as a craneman. I am not a member of the union. I went in and out of the plant every morning and night and was not assaulted. I began work on April first and quit on April the 25th. They told me that some of them was going to get the bunch that did work in there. I wasn't taking the place of strikers; I went in there before they started to strike. They didn't convince me that I was doing the right thing by quitting. I quit because I didn't want to get in trouble. I know them by sight. He and Ishman and McKenny or Howard told me a strike was on. The strike was on only about three days while I was there.

48 *Testimony of Arthur Gordon.*

Arthur Gordon testified as follows:

I am working as a craneman for the complainant, started to work on May 6th. On the evening of May 13th as I left my work I saw some of the pickets at the Wabash Depot and when I got a little closer they started to follow behind us, and some coming up the same side of the street to meet us, and some coming from behind the stamping works, I got knocked down to the ground and they started to kick me with their boots. I don't know what I was knocked down with, it was from behind. There was a pile of bricks there. I was kicked in the forehead; on my head; had my ribs black and blue and bandaged up for about two weeks. I went to the surgeon of the plant and he bandaged my ribs. I had a big lump on my forehead. I was pretty sore, couldn't hardly breath at all and was affected for nearly three weeks. After I was assaulted I made for the street car and got on it, they threw a pile of rocks, they didn't hit me but hit the street car. I don't know any of the names of the men in the bunch.

Before this I had been talked to by Ted Ishman he stopped me and told me if I didn't quit going in there they would put me out of commission. I told him I was going to work anyhow and he said there would be none of us in the plant on Monday. I slept in the plant at nights for about a week. The first two nights I slept on a plank, after that on a cot.

Cross-examination:

On May the 13th when I was knocked down it was about a block

from the plant there were a lot of brick bats and rock thrown, I don't know who threw them.

When Ishman talked to me and handed me one of the bills there were five or six of us on the corner. Ishman was there with several more of his men. He threatened us that if we went into the plant he would get us and there would be nobody in the plant on Monday. That was about Friday. I didn't know whether the plant would be working on Monday or not, I took the chance. I worked from the 6th of April up until now and have been going in and out every night except the one week.

49 Redirect examination:

I stayed in the plant from May 13 until the restraining order was issued by this Court. After the restraining order there was a craneman beat up.

Testimony of Oscar E. Hall.

OSCAR E. HALL testified as follows:

I am Master Mechanic at the plant of the complainant and have been since May the 1st, 1913. I am acquainted with Ted Ishman, Tom Churchill, Eddie Roach, John Aldridge, Isaac Cook and Benj. F. Lamb. I have seen each of those engaged in picket duty around the plant at various times until within the last couple of days, some of them, from the time the trouble started on April 22nd. There were many others, quite a number besides these defendants with them at that time. The crowds would vary from a dozen to as many as one hundred or one hundred and fifty.

I know Freddy, a german, the blacksmith at the plant. I saw Freddy stopped. He was walking down the street; got off the car ahead of me, along about half past six in the morning, walking towards the plant, he and another man whose name I do not recall; they were walking together and the pickets formed a wedge, causing the two men to drift apart eight or ten feet; two or three men got around each of them and was talking to them; I passed within hearing of the conversation between Freddy and the men encircled around him. I heard Freddy say first that he didn't want to belong to the union; he wanted to work; and some of the pickets said, "You can work today old man but you are liable to get your head knocked off tomorrow." That was the same Freddy the witness spoke of as being afterwards assaulted. Freddy was in my department and I tried to get him to come back to work before the restraining order was issued, he refused saying he was afraid to work.

About the 24th or 25th of April I had a conversation with the defendant Lamb, he said to me, "We don't like the way you have treated our boys down here and we just come down to raise a little hell." Just before he said this he was with a part of five or six men.

I have seen the hand bill, Exhibit "B" on the streets in Granite City. I would judge there were hundreds of them. The defendant

Lamb handed me a copy. I was going down the street to get
50 the car and he just s-ep-ed back and handed me one.

I have never seen any acts of violence. I have seen five or six of my men come into the shop in a bruised condition. Of course I do not know what caused it other than what they told me. I have talked to my men in reference to continuing working at the plant and I had to use considerable persuasion at times to get them to stay.

Question by the Court: If men were unmoles'ed would you have any trouble filling all the places you want?

A. I think not.

Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor?

A. I have heard of none.

Cross-examination:

I have seen a crowd of pickets that ranged anywhere from a dozen to one hundred fifty. I couldn't say all the one hundred fifty were pickets. They were men around; I couldn't say they were all pickets. They were scattered within a few feet of the entrance of the plant back of Neidringhaus Avenue and A Street. I have seen them up to within ten feet of the plant, but none came within side of the plant while I was there.

I can't recall the name of the man with Freddy, he is a machinist, nor could I recognize the man who spoke to Freddy.

When Lamb told me he didn't like the way we were treating the boys, he had reference to the reduction of wages. This reduction was the cause of the strike. I never saw any acts of violence nor any of the assaults. I only saw them stop the men and try to induce them to quit work and in this particular Freddy matter to make threats of violence. There wasn't but two strikers. It was somebody on the outside who interfered with Freddy.

Redirect examination:

There were only two men who left the work on account of the reduction of wages and those were the only people I call strikers. Tom Churchill and Isaac Cook are those two. The men who did the talking to Freddy I considered the pickets. Since this restraining order was served I hav-n't seen any of the workmen stopped or any assaulted.

51 *Testimony of A. Walcher.*

A. Walcher Recalled.

I have in a general way made an investigation as to the solvency and financial worth of the defendants in this case. I inquired around Granite City from some of the business people and I referred to the tax books. As far as I can learn there are only two of the defendants, Thornberg and Galloway, that are on the tax books and they were assessed on about $300.00 each.

The plant reopened on April 6th; some men were employed a few days prior to that time to get it into operation. We ran the plant without any trouble with our men up until the morning of the 23rd of April. From the 24th of April on until the issuance of the restraining order the defendants were almost unbearable toward our employees; it reached the point where they were in fear of entering and leaving the works. It was impossible to keep ourselves properly employed with the right class of labor to operate the plant. Since the restraining order was issued every thing has been very peaceable and quiet and hav-n't had any trouble our men entering and leaving the work; it would have been impossible for us to continue to operate the plant had this restraining order not been issued.

Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from anyone in our employ.

Recross-examination:

When we closed in November all our employees were discharged; they were laid off indefinitely on account of closing down the plant. When we opened April the 6th we employed whoever we saw fit; whoever *employed* for employment at the gate. Started the plant the same as a new plant. We only had called for in round numbers, three hundred men, and laid off approximately thirteen hundred men. Eighty or ninety per cent of the employees were old men. I assume these men were members of various oraganizations; I can't state definitely as to that.

Earl Galloway was admitted to my office and told me there
52 was a Committee that represented the labor organizations; I asked him if the Committee represented our employees and he said they did not, and I told him we didn't recognize any labor organizations; we had never had any complaints or demands from any of our employees. We positively did not propose to recognize any of these labor unions. I told him we had nothing to arbitrate; had no complaint to begin with. I knew of no controversy because we had reduced the wages.

After the strike order was issued we met a Committee of the Commercial Club, the City Officials and these labor unions, with the idea of getting them to co-operate with us to the extent of getting protection for our employees. This meeting was not called for the purpose of arbitrating this wage question. It was called at my request by the Mayor and Police Committee. There was an open meeting with the Police Committee, the Mayor and the Committee of the Commercial Club. I there stated that we have no arbitration offer to make to these laboring men.

Redirect examination:

We employ both union and non-union labor; we don't discriminate, never have.

Testimony of Charles Fortner.

CHARLES FORTNER testified as follows:

I am now working in Alton but on April 14 worked for the complainant, worked there from April the 6th until April the 25th. I know Holmes, Ishman and Lamb; On the evening of April 23 as I was going home I met them about one hundred fifty feet from the plant. They asked me if I knew there was a strike on and I told them I did not; they told me there was and the best thing was to keep out of there and if I didn't they would make me. Later on I got word if I didn't cease work I would get my head beat off. I quit work on the 25th of April because I was afraid they would carry their threats into execution and beat my head off and I didn't want to get into trouble one way or the other. I was satisfied with the terms of my employment; had no controversy with the foundry of any kind; satisfied with the working conditions and would have continued to work if it had not been for these threats.

53 Cross-examination:

I did live in Granite City but reside in Alton now. I worked at the foundry before they closed down in November, running a crane. They resumed work on April the 6th and reduced my wages. I worked there from April 6th until April 25th. Went in and out of the plant every day, nobody assaulted me. It was either Ishman, Lamb or Holmes that told me there was a strike on and I had better not work there. I quit on the 25th. After that time I got reports to the effect that they said if I started working again they would knock my head off. That came from an outsider. I don't belong to one of these labor unions. I did belong to the craneman's local but I wasn't working for a couple of months before this trouble and I didn't pay my dues.

Testimony of Fred Stark.

FRED STARK testified as follows:

I applied for work at the complainant's plant about four o'clock in the afternoon of May the 13th and started to work on the 14th. As I was leaving the plant about six o'clock on the evening of the 13th I went straight over the tracks to the Wabash Depot, turned there and went up that street and started toward the street car; got half way up between the depot and the street car and was surrounded by about two hundred men and somebody got behind me and hit me in the ear with a rock. It busted my ear. I feel the affects at the present time and I believe it is broke. After I was hit I started down the street back of the plant. I didn't know anybody in the crowd only by having them pointed out to me. That red headed man back there in the court room I saw there. I don't know his name. He tried to stop me down by the depot as I was coming back.

I pulled out my pocket knife and he jumped aside. I left the plant that night between eight and nine o'clock and came back the next morning at four. The regular time to go to work was seven o'clock. After that night I slept in the plant on a pattern table.

Cross-examination:

I live in St. Louis. This trouble happened between six o'clock and a quarter after. I don't know if it was quitting time for the Commonwealth Steel Plant. I don't know where that plant
54 is. These two hundred men did not come from in fron- of the Commonwealth plant. I don't know who these men were, whether they were employees of the stamping mill or not. The only man I saw was Hartbeck. We passed him as we were going up and then we passed him at the Wabash Depot coming back. He tried to stop me, I pulled my knife, he stepped aside and let me go.

(Complainant rests.)

Evidence of Defendants.

Testimony of Earl Galloway.

Earl Galloway testified as follows:

I reside in Granite City am a plumber and president of the Tri-City Central Trades Council. The other officers are Vice President, Mr. Sproll, Secretary Cavanaugh; Treasurer, Wade; Trustees, Taylor, Reeber, and Wigger. The Council is an organization that is composed of six delegates from local organizations which forms a central body. There are thirty-seven affiliated bodies composed of the building trades, carpenters, painters, plumbers, building laborers, plaster-s, lathers, moulders, electricians, machinists, mill men, barbers, bartenders and clerks and other various trades. Each organization is entitled to six delegates. My membership in the Council is by virtue of being a member of the plumbers' union. The object of the Council is to better the condition of the working class; make conditions so that they can receive more of the wealth they produce and better working conditions in general. We have a constitution and by-laws. Witness identified a copy of the constitution and by-laws and the same introduced in evidence by defendant.

Section 3 which reads as follows: "To settle all disputes between employers and employees in relation to wages, etc., by arbitration instead of strike," was in force. We tried to carry out that section. As President of the Central Trades I first learned of a controversy between wage earners and the foundries from the delegates of the various trades who were refused any wages at that plant and made complaint *of* the Central body that their wages were reduced from two to nine cents on the hour.

The Central Trades is not a secret labor organization. Its meet-

55 ings are open, its minutes are printed and promulgated and sent to all affiliated bodies; laid on the secretary's desk for all parties in the hall to take a copy whenever he pleases. These thirty-seven organizations allow nobody but members to attend their meetings. The Central Trades Council have no sign, pass-words or grips.

After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation in the matter of arbitration with the foundries. A Committee was appointed by the Central body to wait upon this corporation to arbitrate the question. I forget all of the Committee; they were ten and I was one of them. We went to the plant and the gate man informed me the spokesman or chairman would be permitted to enter. As chairman I went in to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions; he stated that he would not meet with any representative of organized labor; if any body around that plant felt mistreated or had any grievances to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back.

This was about the 20th or 21st of April. It was reported back to the joint board and a strike was declared on the plant. Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts I believe.

Some time after that one of the committee of the Commercial Club of Granite City called up a Committee from the Central body and stated they thought they could arbitrate this trouble between the unions and the foundries and would like to meet jointly with them, and the officials of the foundries and the City officials would also try and arbitrate the question. We got a Committee together and went to Lauff's Hotel; representatives of the Steel Foundry, representatives of the City Officials or rather the Police Committee and Commercial Club and others were there. Walcher, Davis and Hall represented the foundries. Everybody took they——

56 Court: This is all very interesting, but what is the purpose of it? Would it be your idea that failing to adjust by arbitration, you would have a right to use violence; what purpose is it?

Counsel for Defendants: We want to show we tried to adjust this by arbitration, but these people refused.

Court: You had a right to propose arbitration; and they had a right to refuse. How is that material at all?

Counsel for Defendants: I think we should be permitted to show

these people were trying to carry out the object of the Central Trades; we ought to be permitted to show the attitude of the Company with reference to this matter.

Court: They may do anything in regard to carrying out the purpose of their organization which does not go beyond peaceful means. This bill alleges violence; you are not liable for anything but violence. The whole subject here is whether or not you were guilty of violence, and of these defendants; nothing else is competent.

I had a conversation at the Hotel with Mr. Davis and when I stated that some of the men they had imported in there as strike breakers had shot at some of our men, Mr. Davis told me that the only trouble with the man that done the shooting was that he didn't shoot straight enough. Mr. Davis is connected with the foundries and the man that did the shooting was an employee of the foundries.

I believe I was at the plant about three mornings for about fifteen or twenty minutes each morning, and about four or five evenings for the same length of time, or may be a half an hour. At the time I was there there was no violence whatever done by the strikers. The representatives of the Central Trades were there doing picket duty. The closest I saw pickets was on the tracks, twenty feet in front of the Wabash Depot. I saw no assaults while I was there.

The Central Trades did not instruct any body to assault these parties, these strike breakers or anybody. The only instructions we gave were to picket the streets leading to the plant and ask the men not to go in the plant and take the work under the reduction of wages.

I was not at the plant or on the picket line on May the 13th. I worked until five o'clock in Madison, Illinois, an adjoining town; got back to Granite City about 5:30 and then I was in Boyd's garage from then until about six; from there I went home. I did not strike any of the strike breakers or other employees leaving the plant, nor did I strike nor assault these parties on any other day other than May 13.

57 Cross-examination:

A Committee of the joint board of the Tri-City Central Trades Council selected these pickets; rather they were from the different crafts that were connected with the reduction in wages. The Joint Board placed pickets down there at the Wabash Depot along the streets leading to the plant of the American Steel Foundries and we sanctioned their action. On the seven or eight occasions I was down there I went down to see how things were going and went down to see that things were going right. These pickets were stationed adjacent to Neidringhaus Avenue around the Depot. That is one of the main streets leading from the plant.

I am a plumber and was never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there. We circulated some bills

(witness handed Exhibit "B") that is a representation of the seal of the Tri-City Central Trades Council. This is one of the bills that was circulated that I referred to.

While our constitution says, "To settle all disputes between employers and employees in relation to wages, etc., by arbitration instead of strike" yet if we can't do it by arbitration then we strike. And we struck in this case, declared a strike; we were rather locked out first; then declared a strike and sent down these pickets to enforce the strike. Our purpose in sending the pickets down there was not exactly to enforce an increase in wages, but try to encourage working men who go and work there, they were working under a little wage; and to get those who were working there to quit work so the American Steel Foundries would be compelled to raise their wages to the standard.

Redirect examination:

One of the purposes of the organization was for their mutual protection, education and social advancement. When we placed the pickets there that was for the purpose of, if possible, to prevent these men from entering and working at this plant until they would arbitrate this difference or advance wages to the former scale. These pickets were not authorized to commit any unlawful act. That wasn't the intention of the Central Trades Council; that isn't the way the Council carries on its business. I have been Presi-
58 dent of the Council for two years. I have an equity in a piece of property. The rank and file have just simply their labor; a great many of them don't make enough wages to secure a piece of property. I never saw anybody connected with the Central Trades Council assault any of these workers.

Recross-examination:

If there was a meeting of the Central Trades Council on June 3, 1914, I attended it. I attended the meeting when the answer to this bill was read at the Central Trades Council. I heard the Secretary read a report of the finance Committee at that time. I don't know if the report showed the Council had only $87.00 in its treasury. I don't remember, I couldn't say about that.

Testimony of M. E. Kirkpatrick.

M. E. KIRKPATRICK, testified as follows:

I am Mayor of Granite City and have been for a little more than three years. The plant of the American Steel Foundries is located in Granite City. When I see them I know the officers and managers of that concern. I know Mr. Galloway and some of the other men representing the Central Trades.

All that I know with reference to the assaults that took place at

or near this plant during April and M[illegible] what I have heard on our Police reports, that our officers make. Directly I know nothing. I was down to the plant twice I believe during the day time. I didn't go in the plant but went down along Pacific Avenue, there were just a few men standing around there the time I was down. I couldn't say if they were pickets; I didn't recognize them. The men I saw were standing around the Wabash, a few around there, and if I remember correctly four or five standing around the gate where they go in; one was the watchman. With reference to Police protection at this plant I am ready to give it and did give it.

I was at the Lauff Hotel at the Meeting of the Commercial Club, Police Committee and representatives of the Trades Council and the Foundry, and I heard Mr. Davis say in reference to Mr. Galloway's remark about the shooting that the only thing the matter in that case was that the man did not shoot straight enough.

39 As Mayor of the City I consider I have plenty of Policemen to protect the property; I have done that all along and would have done it without this injunction and ready and willing to do it now.

Cross-examination:

I am a member of the socialist party and elected on that ticket as Mayor (objected to by Counsel for defendants). I am not a member of any labor organization; I am an honorary member; that is, I have been a member, but at the present time I only hold an honorary membership of the Amalgamated of the Iron, Steel and Tin Workers. Prior to my election I was a steel worker in a steel mill for about ten years. My duties as Mayor take practically my entire time.

In this reduction of wages at the American Steel Foundries my sympathy is with the strikers or with organized labors in this affair. Through the Police reports I know there have been assaults at the plant. I promised the plant protection. After I had promised protection there were a few fights.

In the conversation I overheard between Davis and Galloway with reference to the shooting I understood from the conversation that Mr. Davis wasn't present when that shooting took place.

Testimony of B. F. Lamb.

B. F. LAMB testified as follows:

My business is representing the Union National Association of Machinists; I am a mechanist by trade. I live in St. Louis. The Tri-City Central Trade Council is in my District, therefore I am in Granite City quite often; I have a local there and they are affiliated with the Council.

During April and May I went to Granite as often as I could, I should judge about three days a week. Yes, sir; I was absolutely

aware there was a strike on there. I went over as a representative of my organization. Prior to the strike some of the men in my organization were employed at the plant, we called them out after the strike had been declared. I was at the meeting at the Lauff Hotel, as one of the Committee. I heard the conversation between Mr. Galloway and Mr. Davis about the shooting. The other party stated it as correct as I could state it.

60 I went to the plant about three days a week. I did picket duty. I was on the picket line myself. The picket lines were at the Wabash about one hundred or one hundred twenty-five yards from the plant. The pickets conveyed information to those seeking employment going in there and there was a strike on and all trades were out of that plant, and asked their co-operation not to go in under the reduced rate. We absolutely did not authorize any assaults to be permitted. I saw none of the men engaged in picket duty do any assaulting. I have heard of some fights taking place away from the plant but I was in no way connected with them. It might be that the witnesses when they speak of the fight that took place between nine or ten men who were working at the plant and about two hundred employees up near the street car that they had reference to the enameling Company there; their plant is on Neidringhaus Avenue; they quit all the way from 5:30 to 6:00 o'clock. They have a number of different employees, ladies and gents and they have their hours so regulated that they are coming out of that plant most all that time from 5:30 to 6:00 o'clock. I recollect meeting Mr. Hall and talking about the situation. I have looked upon Mr. Hall as being friendly towards me. I said it was a severe cut for them to make and it looked as though they were going to raise hell in the town, because conditions in that town were good, but I didn't like to see a fight going on, but it looked as though it would come.

I didn't commit any unlawful acts or strike anybody. I didn't see anybody connected with the Council or any representatives of these thirty-seven organizations do anything wrong.

Cross-examination:

I saw the fight was coming on on account of the severe reduction. I have been in these fights before, consequently my remark to Mr. Hall was along my experience. I told Hall I thought that reduction would raise hell in the town.

On the 22nd or 23rd of April, I think five of our machinists were in the plant, one by the name of Missell who quit of his own volition and Tom Churchill and Hampy and Drogg; Drogg was what we call a semi-machinist.

61 I was instrumental in putting some of the pickets there myself; I put out four or five; I paid them; that is our constitution; they were paid out of our fund.

I never worked for the American Steel Foundries. I object to the present condition. I am trying to remedy those conditions, but not by a strike if we can avoid it. They absolutely refused to met us.

The picket line is to inform the workmen of the truth and ask them to join hands with us and maintain conditions. These wages are too low. They are unheard of in the history of Granite City; a nine cent for a machinist is absolutely a shame to that City. We are going to change that condition if we can do it peacefully. The constitution requires the men must picket the plant from which they go out.

Redirect Examination.

The purpose of putting pickets is to notify men of the condition. We don't countenance any unlawful act, that is forbidden in that organization.

Testimony of Simon Henry.

SIMON HENRY, testified as follows:

I am the Sheriff of Madison County, and reside at Edwardsville, Illinois. I only know about the condition existing at Granite City during April and May with reference to this strike from what I have heard. As Sheriff of Madison County I think I am able to provide all the protection, life and limbs if necessary.

Q. And it was done as far as you know?

A. Why, yes as far as I know; whenever I was called on by the proper authorities.

Cross-examination:

Mr. Glasgow came up to see me and also Mr. Walcher asking protection. I said I would look into the matter. Some time after that you (Mr. Wheeler, counsel for complainant) went up to Edwardsville to see me. You asked me for protection and I told you I would look into the matter and report to you. I didn't report to you, though; it didn't become necessary. You told me in that conversation that you didn't want to get out a federal injunction.

Redirect examination:

I had two deputies down there and told them to investigate it and they reported there wasn't nothing doing much. If it was necessary, in my judgment we would have provided a deputy. If in the future it is necessary to protect property, life or limb, and I am called on by the proper authorities I will protect it. Neither the Mayor or Chief of Police of Granite City called on me for protection.

Recross-examination:

Q. Who are the proper authorities?

A. We generally wait for the Mayor or Chief of Police.

Q. When you say you will give us protection in the future, you mean just as you have given it to us in the past?

A. No, I think I would handle it all right.

Testimony of W. J. Hartbeck.

W. J. HARTBECK, testified as follows:

I live at St. Louis, am a blacksmith, a member of the blacksmith's union and have no connection with the Central Trades Council of Granite City.

I would go over to Granite City there sometimes every day. I am the business agent and official secretary of the Union and the blacksmiths of Granite City are in my local. I have been at the meetings of the Central Trades and heard it reported about trouble between the complainants and the employees. I acted on the picket line every time I was over there. Sometimes I would be over there in the evening and sometimes at noon time. The pickets as far as I could see would approach a man and tell him the conditions the wages they were working under and request them to come out with the balance of the other men; try to restore the wages to wages formerly paid. Did that myself. I never assaulted anyone. I never threatened anyone. I am aware some of the witnesses testified I committed assaults. I wish to say in regard to that trouble, myself and a big machinist they call Ben.,—don't know his last name—and another gentleman by the name of Ted Ishman were standing at the Wabash Depot and a whole lot of other men I don't know, were standing there, and if I ain't mistaken there were two fellows, officers,
63 also walked up and down the track; when these men came out of the plant they walked up to me, as usual; they were all in the crowd, the colored fellow was included; they walked by us and we looked at them; we never said a word to anyone that night; because the night previous to that there was one fellow in particular, this man Quinn, looked like a dangerous man; he carried a hammer always in his pocket. I never approached Quinn or I never approached Bell, I have approached the colored fellow Francis, and one or two of the other fellows, but I never threatened anyone; the statement made here I threatened to get anyone was false.

I heard Stark testify this morning about being hit by a rock on May the 13 at 6:15 P. M., near the Wabash Depot. I remember the gentlemen coming down well; as I said before me and this big blacksmith and this Ted Ishman and two police were all there at the Wabash Depot, and where this fight started we didn't know anything about it; it was a good long block up at the loop where the McKinley line turns north. This was near the Neidringhaus Enameling works. The men care coming out of there from five to six o'clock. The fight took place in the neighborhood of six o'clock. Stark passed me just a little east of the Wabash Depot. I had no intention of stopping Stark; he come running down with a knife in his hand; I wouldn't interfere with a man with a knife. I didn't strike anyone with a brick. I never used any violence of any kind; I will admit I spoke to men, but never threatened or used any violence. I tried to persuade men not to work there under the reduction of wages.

Cross-examination:

In my estimation the four or five witnesses who swore to my presence at different times to assault in my estimation testified falsely. When I saw this man coming down with a knife he was on the sidewalk and I was coming up this way. The sidewalk is right by the Depot. Ishman and this big machinist by the name of Ben was with me and quite a few other men, couldn't say how many, about eight or nine; couldn't say they were all on the picket line. I didn't know all of the pickets. I never worked for the American Steel Foundries.

The gate of the Stamping works is about opposite the Wabash Depot across Neidringhaus Avenue.

64 When the reduction of wages took effect, I was ordered by the superior of our district board to go over there, and to have men over there that would go to work to try to have them come out, if they could under reduction of wages; probably some of our union men would go in unbeknowns of the trouble. At the time I went over there none of our men were at work in the plant because they had been sent for. But I went over anyway.

Testimony of Harry McKenny.

HARRY MCKENNY, testified as follows:

I live in Granite City and am a steamfitter and belong to one of these unions. I know Arthur Knott by sight. I heard him testify here yesterday. In reference to what was said and done at that time, I met Mr. Knott come out there one morning, me and two and three more parties and asked if he knew if there was a strike on; he said he did not and said he would look into the matter; if there was he wouldn't go back in; so one evening I seen Mr. Knott going back in. I was over near the American Steel Foundries and I started to approach him to talk to him about it and he pulled a knife on me and went on *it*. The knife had a blade about two and one-half inches. I hadn't done anything to cause him to pull a knife, I just went to speak to the gentleman to see if I could keep him from working there. He said, "What in the hell do you want?" And pulled his knife out and drew it on me. Churchill wasn't with me at the present time; he walked up there. A fellow by the name of Roach was with me; he didn't assault him or threaten him. I was around there quite often morning and evenings acting as picket.

Yes, sir I assaulted one of the fellows there. Churchill stopped him one morning and was talking to him and I come up and asked him where he was working and he said he was going in there to work; I told him to stay away and he said, "you G—d d—n son of b——, I will work where I please," and I hit him." We were standing at the south end of the depot; me Churchill and some other fellow. I never tried to stop anybody, from going into the plant by force. I

never assaulted nobody. I talked to them; tried to talk to them in a good way.

65 Cross-examination:

I am a steam-fitter and did not work for the complainant in April and May, 1914. I did work for them in 1907, but quit because I was ordered to help a machinist that wasn't a union man. I was down there often doing picket duty; Roach was with me a couple of times. I saw Churchill a few time- around the Depot; saw Lamb two or three times, saw Galloway once; didn't see the Thornberg's, saw Clay Holmes there once.

I didn't give Knott any cause to draw a pocket knife on me; Roach was standing with me and Churchill came up afterwards. This was probably fifty or sixty feet from the gate of the plant. I tried to advise the fellow not to work. I didn't suppose he knew what he was doing.

The gentleman sitting over there is the fellow I hit, his name is Steve Haefner. I started to talk to him and I didn't like the manner in which he talked back to me and I hit him for doing it. I was then doing picket duty. I was going to stay there to talk to the men going into the plant. Churchill stopped Haefner and was talking to him when I come up there. I never hit anybody else.

Redirect examination:

I didn't hit him because he was going in to work, just because he called me that name.

Testimony of Thomas Churchill.

THOMAS CHURCHILL testified as follows:

I am a machinist. I was working for the plant when it closed down in November and went back to work when they opened but got an increase over the new men they had, but still it was a reduction at the same time. I am connected with the machinist's labor union, am a member. I did picket duty over at the plant pretty nearly every day, except a few days. The duties of a picket are to try to persuade men from going to work under those conditions and cutting wages.

I know McKenny who just testified. I was with him the day he struck Haefner. I happened to come in the same car with Haefner that morning; didn't know he was on the car until I walked
66 down the street a half a block. Francis was on the block; I asked him what he was going to do; that I wouldn't go in there; the fellows all got their wages cut and are all staying out and you will only be scabbing. He said, they are all going in there; and I said, don't you believe it someone has misinformed you, and kept talking; I was the only one around there and Francis went into the plant; I kept talking to him and McKenny and another big

fellow came along; McKenny got talking to him and he said You —— of b—— I am going in anyhow. Then he begged us not to hit him and said he wouldn't go in. In fact I didn't hit him myself at all; never laid a finger on him. McKenny hit him; slapped him on account of the profanity he used. He hadn't struck him or done anything until he called him that name.

There was something said yesterday about my striking a blacksmith; Steve Haefner is not a blacksmith. I never struck a man over there; merely warned them, asked them to say out of there; better keep away. There were two or three fights that took place. I seen one or two. The first one that I saw was the big one that they were talking about with the two hundred men. Some of these men come off of the street cars; some behind the stamping works and some from the other side of the street; in fact men were going home from other plants; don't know where they all did come from. I was on Nineteenth Street about a block and a half from the plant. I didn't take any part in that fight. Then this McKenny fight, that is all. I didn't strike anybody in that fight.

Cross-examination:

At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had to take at the time being and I haven't had anything better since. I didn't get a better job. I quit because these fellows asked me to go out.

I stopped Steve Haefner and McKenny hit him. After he was slapped he begged us not to hit him. He hit him twice. I don't know where Haefner went, he said he was going home. I went around the depot and continued doing picket duty, but didn't stop any more men that morning. I couldn't stay how ma-y men I had stopped; I spoke to quite a few men. I never told them that they would get their heads knocked off, or blocks knocked off. I
67 just suggested in a nice way "I would like you to quit work" and they didn't know what they were doing. Tried to tell them in a nice polite way; more or less explained the situation to them.

Redirect examination:

When I found out there was a strike on I quit because I was a member of the union.

I know something about that basket of food carried by the negro porter. As near as I can judge seven or eight were standing around the depot; someone seen this fellow coming with the baskets; one of the fellows went to talk with him and I crowded around also; the first thing I knew they were up set, but I didn't touch the baskets myself. I didn't say the porter up set them. I don't know who the man was that up set the baskets. I saw the man that up set them; he just kicked them out of his hands. I was right there in the bunch.

Testimony of Ted Ishman.

TED ISHMAN testified as follows:

I am a craneman and reside at Granite City, a member of the cranesman's union affiliated with the Tri-City Central Trades Council. I did picket duty during the strike; I was there quite a bit, morning and evening; I used to go down there pretty much. The duties of the pickets were to inform the employees of the plant there was a strike on and inform them under what conditions they were working and of the conditions we had before.

In reference to the testimony of Crabtree yesterday about the mix-up in which I had a part, I believe, as near as I can remember, on the 8th of May there were Crabtree and four other gentlemen, I think, come across the railroad tracks and there happened to be about six or seven pickets on duty there; we got to talking to them and somebody started a fight and everybody got into the fight there. I couldn't say who started the fight. They claim I hit Mr. Crabtree. Mr. Crabtree himself claims I hit him. The strike breakers are mixed up in the fight and seven of us on the picket line. Three men from the foundry and two men from the picket line were arrested, and we were all taken before the Court. When the
68 fight started I happened to be right close to all of them; somebody made a pass at me and I hit Crabtree, they claim; I hit somebody and they claim it was him. I hit somebody because the fight started; I had to fight my way out of it. There was about twelve in the crowd and it was a general mix up.

Q. What did you strike this fellow Crabtree for, because he was going to the plant?

A. The fight just started; don't know as I had any particular grievance against Crabtree.

I didn't strike him because he was working at the plant, that is the only time I struck anybody. This fight was at the Wabash Depot, about one hundred and fifty yards from the plant. And there were seven on the picket line and five of the other fellows.

Cross-examination:

These pickets that were there that got into that fight were pickets that were sent out by the Trades Council, defendants in this case.

I don't know exactly the names of the fellows that were with Crabtree; Hedstrum was with them and I think Crawford they were coming across the railroad tracks leaving the plant from their work. We had seven pickets there and as they came by the pickets stopped them and then the fight started. I was there at the time and just took a little hand in it. I was not working at the plant this spring after it resumed operations. I was working there at the time it ceased operations.

Testimony of Clay Holmes.

CLAY HOLMES testified as follows:

I am an electrician, I did picket duty at the plant three or four days. I passed out bills and talked to the men as they were going in, trying to keep them out. I worked there when the plant closed in November, didn't go back to work in April on account of the reduction. I don't know what the reduction was I didn't go back to find out.

I saw no controversy between the men working there and the pickets. I didn't have a controversy with Francis who testified here. I heard his testimony. I don't know much about that occurrence.

I seen the bunch and they said they were going to have the
69 negro pinched, they had him taken off a car when the policeman took him up to the police station; there were quite a bunch there to see what went on and I went up to the police court to see; consequently the negro had be- arrested for assault and battery; a few days later the trial came up and no one appeared against me and it was thrown out of court. I had nothing to do with it. I had no controversy with anybody, had no fights, made no threats and never saw a fight.

Cross-examination:

I made application for work when the plant opened in April. I didn't get the work. I went on the picket line for three or four days, nobody sent me there. I didn't mingle very much with the other defendants; I did in the afternoon; I saw them around there. I knew they were picketing; and I was picketing.

Testimony of C. E. Gerlich.

C. E. GERLICH testified as follows:

I am a machinist residing in St. Louis. I worked for the complainant but haven't for two years. I belong to the machinists' union. I worked at the Commonwealth plant about two blocks away from this plant and in going to my work I can easily get off at Sixteenth street and walk up the railroad track or come around the loop to Neidringhaus avenue and the walk is a little bit shorter and better. I heard the testimony with reference to my kicking a basket belonging to the negro porter. I was arrested for that and acquitted. I didn't have anything to do with that and knew nothing about it. I know McDonough I understand he is some representative of the stationary engineers. They are included in the Central Trades Council. I know Wm. Thornberg and C. Thornberg. They are not here. I didn't do any picket duty; just passed there morning and evening to and from work. I had a controversy with a fellow named Imhoff. It was a personal matter between him and I. It had nothing to do with the fact that he was working at the plant. Didn't know he was working there.

70 Cross-examination:

I stayed around there a little and talked to the men, but not to the men going into or out of the plant, I stopped there at the depot occasionally, I have seen Ishman over there, have seen Churchill and met Lamb several times. I stopped and talked with them. I stayed around and talked with them about a quarter of an hour or so. I didn't see and don't know anything about the occurrence with the porter. I am not working at the plant at the present time, nor did I work after the resumption of work. I was opposed to the reduction in wages and would like to have seen the wages put back.

Testimony of Isaac Cook.

ISAAC COOK testified as follows:

I am an electrician and belong to none of the unions. I worked at the plant about three weeks after it started up. I quit because they cut my wages.

I didn't strike Haefner on April 30th, I never did speak to him while he was working there the last time.

I have done picket duty around there; I couldn't exactly say how many days; I was around there two or three days a week. I sat around the depot over there with the rest of them. No assaults were committed. I talked to the men and asked them not to go in there; they paid small wages and didn't think it was right to go in and take a fellow's place with smaller wages. I was about a block from the plant when doing picket duty.

Cross-examination:

No one sent me there as a picket. I saw the other men from the trades council and I joined with them and we were all together picketing there, talking to some of the men going to or coming from work. I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work, I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. I got a time card when I went to work and if my rate of wages was on the time card I never seen it. Mr. Floyd said I was going to get 25c an hour, and when pay day
71 come I got paid 23c an hour. I didn't quit as soon as I got my pay but worked four or five days longer and I quit because they said there was a strike on. I just felt as it was right for me to come out. I wanted to get all the men out of the plant. I wanted to quit work and didn't want anybody else to work in my place. I knew if they didn't have men to fill my position the plant couldn't run and I was trying to keep them from getting men to fill those positions. I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade the man not to take the places of the strikers the Company would restore the wages. I was trying to make them restore the wages or close down the plant.

Testimony of C. L. Burton.

C. L. BURTON testified as follows:

I reside in Granite City, an Alderman of the Fifth Ward. I work at the Madison Car Shops. In April and May I was working at the Laclede Steel Plant in Madison. I never worked for the Steel Foundries. I belong to no labor union, I did not act as one of the pickets. I took no part in it at all. I know nothing of what happened there more than I have heard said by the public newspapers. I was made a defendant and notified to come here. I was not served by the Marshal. I committed no unlawful acts on any of the parties in the American Steel Foundries. I passed by there going to and coming from work; left my home at fifteen minutes to six and returned about five-thirty in the evening. I saw no disturbance there whatever and passed there every day for three weeks.

Cross-examination:

I never stopped and talked there to the boys but once in the whole time and that time I merely asked a fellow how he was getting along and how he was feeling. All I knew about the strike was what I heard from other fellows. I never spoke to a man by the name of Springfield but once while he was working at the plant and he asked me where I was working and I asked him where he was working.

Testimony of T. M. Cavanaugh.

T. M. CAVANAUGH testified as follows:

I am a printer by trade and Secretary of the Tri-City Central Trades Council and have been for seven years. I do not know Wm. Thornberg or C. Thornberg. I do not know John Aldridge. I know McDonough, the representative of the stationary engineer's union. He looks after the interest of his organization in Granite City. Burton does not belong to any labor organization.

At the regular meeting on April 15th of the Tri-City Central Trades Council a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday the 19th. Ten or eleven trades were represented and we decided to call on the American Steel Foundries and see if they could not have the wages reinstated or arbitrate the matter. I wasn't present at the arbitration planned meeting which was on the 20th of April. At the meeting Wednesday evening the Committee reported they failed to reach an agreement and the management said they had nothing to arbitrate.

The object of the Council is to bring the laboring class into closer affiliation and secure better working conditions and wages for the workingmen. No one connected with the Council authorized any unlawful act.

Cross-examination:

They called a strike in this case. Our organization is not secret, our meetings are not secret. Mr. Welcher here is welcome to any meeting he wants to go to.

On April 15th we had a communication from the unions representing some of the trades working at the Foundries. We had complaints from the men themselves working at the foundry. I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries, I don't know their names. There were only two of them. I never worked for the Foundries.

73 Redirect examination:

From the reports that were made all the trades working at the foundries had their wages reduced.

Recross-examination:

I don't know that except from reports. I don't believe the Moulders were reduced. We tried to get the moulders out and they wouldn't come out and they didn't come out, but we tried to get them out.

The moulders were the only ones of the organization working there. I did no picket work.

Testimony of Edward Wade.

EDWARD WADE testified as follows:

I am a sewer man or plumber's laborer. I am Treasurer of the Central Trades Council. I did no picketing at the plant. I passed by there three or four times. I don't know whether I passed by in April, but once or twice in May. I saw no disturbance of any kind.

Cross-examination:

I am not named individually as a defendant. The three men I recognized as doing picket duty were members of labor organizations affiliated with the Central Trades Council. I suppose that they were doing the picket as endorsed by the Trades Council. I was present at the Council meeting when that was endorsed. I took no active part in it but acquiesced in what they did and consented to it.

Redirect examination:

We endorsed the action in reference to the pickets. We didn't authorize any unlawful or wrongful act. I know Wm. Thornberg. I don't think he was served in this proceeding. I don't think C. Thornberg was served. I heard McDonough say he wasn't served. I never heard of a man by the name of John Aldridge.

74 *Testimony of E. H. Taylor.*

E. H. TAYLOR testified as follows:

I am an electrician, a member of their union and of the Central Trades Council. I am on the board of trustees of the Council. Its object to promulgate the general welfare of the laboring class. I never heard of them authorizing any unlawful or wrongful act. I never heard of John Aldridge.

Cross-examination:

I was not working for the American Steel Foundries. I was present when this strike was called by the Tri-City Central Trades Council as I acquiesced in it and consented to it.

Testimony of Ed Roach.

ED ROACH testified as follows:

I am a machinist, a member of their union and reside in East St. Louis. I was in Granite City off and on ever since the strike has been called as one of the pickets. I put in time on the strike—I guess I was there every day pretty near since the strike has been called. I never seen any acts of violence committed; I was there from morning until night and never seen nothing. As a picket I just stopped those men and told them the conditions and what they were getting there, and if they wanted to go in, I let them go; and if they didn't want to I kept them out. I never assaulted anybody and didn't try to use any force to prevent anyone from going in. I was there nearly every day.

Cross-examination:

I didn't see Ishman and Churchill when they had that fight. I guess I wasn't there or I surely would have seen it. I didn't see the seven pickets assault Crabtree. I must not have been there then. I didn't see the blacksmith Freddy assaulted, I was around some place but didn't see it. I don't know who did it. I don't think it was the pickets. I wasn't there at the time of the fight on the 13th. I never saw two hundred men assault those fellows.

I haven't worked for the foundries since a year ago this month. I wasn't working and so I did picket duty the same as anyone else would. Nobody brought me there in particular, I brought myself there. I wasn't satisfied with the way the Company was treating these fellows. I didn't work there in April, 1913, but I expected to go to work there or some other plant in Granite City. I was not satisfied with the way these people were treating their men and I came all the way from East St. Louis to do picket duty.

Redirect examination:

I have been working there six times. Wasn't there in November when the plant closed down. I quit before that. They were paying

forty-four cents. In April this year they were paying all different wages; one man told me he was getting twenty-two cents.

Counsel for Defendants: I desire to read into the record the preamble, portion of the by-laws and portion of the platform of the Tri-City Trades Council.

(Here pages 139, 140, 141 of the transcript of testimony follows.)

And thereupon, counsel for defendants read as follows, to wit:—

Portion of the By-laws, etc.

"Constitution, By-laws and Rules of Order of the Tri-City Central Trades Council.

(Seal.)

Of Granite City, Madison, Venice and Vicinity.

Headquarters: Granite City, Illinois.

Preamble.

Whereas, It has been fully demonstrated by experience that organization and unity of action among working people are important and essential in order to combat the evergrowing encroachments of organized and consolidated capital; and as there are many questions effecting the interests of the working classes which cannot be dealt with in special and separate Trade and Labor Unions, and as the end can be best attained by a central labor organization, through which all branches of labor may prove allies to any particular one that may be oppressed, and all may form one brotherhood for the defense and protection of the laboring masses; therefore, be it

Resolved, That we, the delegates of the Trade and Labor Unions here represented, do hereby form the Tri-City Central Trades
76 Council of Granite City, Madison, Venice and Vicinity for the purpose of organizing and concentrating the working classes for their own mutual protection, education and social advancement, and to that end we adopt the following:

Platform.

1. To bring within the folds of organization every department of productive industry in the Tri-Cities and vicinity, and to attach them to this Union, for the purpose of securing their co-operations in defending and advancing the interests of the working classes.

2. To impress upon all employers the necessity for paying their employees the full current wages and giving preference to work to union members.

3. To settle all disputes between employers and employees in relation to wages, etc., by arbitration instead of strikes,

4. To shorten the hours of labor, thereby giving to those who are unemployed a chance to find work to support themselves and families; also giving the laborers more opportunities for self-improvement and social enjoyment. To relieve labor of the competition of inmates of prisons and reformatory institutions, and of children under sixteen years of age, who should be at school; to provide for the inspection of factories, mines and tenement houses, with a view to securing proper safeguards to health, life and limb; to enact lien laws whereby the labor- should be assured of payment for his toil; to properly educate children, by compelling them to attend school and furnishing text books free; to abolish all laws which discriminate against labor, and to enact into laws measures which would tend to elevate and improve the condition of the working masses, and to see that such laws enacted are enforced.

5. To examine and discuss all questions affecting the interests of working classes, and take such action as will tend to improve their condition.

7. To assist each other in securing fair remuneration for labor and forcing recognition of our rights as free citizens, to join and participate in any organization not in violation of the fundamental laws of the land, and enforce that right, by withdrawing and using out utmost influence to induce others to withdraw all patronage from all employers who seek to control the mind as well as the labor of the workers.

* * * * * * *

"

Constitution.

Article 1.

Section 1. This organization shall be known as the Tri-City Central Trades Council of Granite City, Madison, Venice and Vicinity; headquarters, Granite City, Ill.

Section 2. This Tri-City Central Trades' Council shall be composed of delegates from trades and labor unions affiliated either with a national or international union of their trade, or the American Federation of Labor.

Officers—Their Duties.

Section 3. The officers of this Council shall consist of a president, Vice President, Secretary, Treasurer, three Trustees and Sergeant-at-Arms. No two of the above officers shall be members of the same local union.

* * * * * * *

Defendants rest.

And this was all the evidence introduced by either party.

Statement by the Court.

And thereupon, at the close of all the testimony, the Court made the following remarks:

The law is very well settled, I think so well settled that there can be no dispute with the Court or between counsel, as to the rights of the parties. It is not a new question; not so old in this country as in Europe; but still it is not a new question even in this country.

Men have a right to combine their capital and create artificial bodies for the carrying on of great works, works so great no one man could do it. That is a combination. The law recognizes it. It is legal. The progress of the world has been marked more among the nations which permit this combination than anywhere else in the world.

In order to carry on these great works, something besides capital is necessary. Something more important than capital; something more human than capital; something that touches the people more tenderly than capital. That is labor. So the law provides, wisely provides that a man who has labor to sell may combine with his fellows for the purpose of helping his own condition, or getting more for the commodity which he brings to the public service than he would if he were not organized and that brings us near to the point of conflict. The Manufacturer, the corporation, has work to
78 do. It offers a price, the price which in its judgment, the market would justify. The man or men who have the labor to sell try to meet that price. They can not do it always. They say we will exercise the privilege, which the law gives us, to refuse to work for you. A and B join with C, D, E, and F, and they have a right to do that and say they won't work for you individually, or in a body. Now that is a lawful right; but the very statement of that right contemplates that any other man, or any other body of men organized or unorganized, has a right to sell his or their labor at the price offered if he wants to.

Now you see how absurd it would be to affirm one of these doctrines and disaffirm the other. The very basis of law on which the labor union exists contemplates that the man who does not belong to the labor union has the same right to exercise his own judgment as to the price at which he will sell his labor. When you consider all these things, the man's home necessities, the man's wants, the size of his family, his condition in life, whether or not he has a nest egg laid away, whether or not he has a bank account, is the controlling feature with him. One man moves from one motive and refuses; another man moves from another motive and says, "yes, I will work at the price you offer; the wages are satisfactory and the conditions are satisfactory." Then we are up to the time when the law is called upon to decide whether the man or the group, which refused to work shall say that the man who wants to work shall not work. You see what an absurdity it would be to affirm that doctrine.

This bill is brought upon a theory different from most of the bills

in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trades of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we 79 will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American government rests; viz: the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We would not be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the men who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law and there is no other view to take of it. This evidence clearly shows that this union, this trades council, by the testimony of its officers entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it. When the company several months later undertook to run on a different scale of wages they contracted with certain men, who did not belong to the union, to work for them. These men have said upon the stand they were willing to work; the wages were satisfactory; the conditions were satisfactory, but that they didn't work because they were afraid of the defendants.

Now a man who doesn't want to work at a certain wage has a right to withdraw; another man who does want to work under those conditions and for those wages has an equal right to work without being interrupted and the first man shall not interfere with the second.

Work is the condition of us all. No man is of any account in this world without it; no matter what character the work may be.

We are all workers or we are no good. Every man must judge
80 for himself as to the contract of labor which is satisfactory for him. He may work, or he may decline to work, but he shall not interfere with his neighbor who desires to work, for the government will protect such neighbor and a government that will not protect such a man isn't fit to live, and in my judgment, will not permanently endure.

The proof here sustains the averments of the bill as to the illegal combinations; such a combination can not have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be violent or peaceful.

However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the Courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the conditions under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the streets with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get to him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There could be no other purpose in it because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you.

Counsel for complainant may prepare an order finding the averments of the bill sustained and extending the injunction, making the restraining order an injunction against the union, its officers and all other persons who have had any part, as shown by the evidence in the execution of the unlawful combination.

81 The injunction may go this much further, it may prohibit absolutely picketing for the purpose of executing this unlawful purpose. It may extend also to all persons who shall engage in helping or abetting the unlawful combination whether the knowledge came to them before or after the issuing of this injunction. Let the injunction be printed and posted liberally in the vicinity of the works.

Perhaps I ought to say to you gentlemen who are the officers of the defendant union, that the Court regards it as your duty to explain to those who are not here and to those who are here, if necessary, just what the purpose of this order is, and that it is their duty to obey it, for the Court will find some means of enforcing its order.

Mr. Smith: I think these gentlemen will desire that I appeal this case. What amount of bond will *we* be required?

Court: The injunction doesn't injure anybody and wouldn't subject anybody to damages, because it simply provides that you shall not interfere with another man's business and I have observed as I have gone along through life a great many men have been very successful by simply attending to their own business. Now all this injunction does is, to say that you shall let other men's business alone; no man is enjoined from attending to his own business, but interfering with other people's business is illegal in this case; therefore, as no injury is being done by the injunction and there will be nothing except costs, I suppose a $500 bond will be sufficient.

The foregoing is a true and complete record of the abstract of testimony and proceedings in the hearing of said cause.

Forasmuch, as the said testimony and said several proceedings and matters of exception do not appear of record in said cause, this Certificate of Evidence is presented to the Court by the defendants, with the prayer that the same may be signed and sealed by the Court here, which is done accordingly this 4th day of August, 1914.

HUMPHREY,
Judge of the District Court of the United States, Southern District of Illinois.

Indorsed: Abstract of Evidence. Filed August 4th, 1914. R. C. Brown, Clerk.

82 *Decree of June 9, 1914.*

And afterwards, to wit: on the 9th day of June A. D. 1914, the following further proceedings were had in said Court in said cause and were entered of record, to wit:—

UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division:

In the United States District Court, June Term, A. D. 1914.

TUESDAY, June 9th, 1914.

Court met pursuant to adjournment.
Present, the Honorable J. Otis Humphrey, Judge.

In Equity. No. 14.

AMERICAN STEEL FOUNDRIES, a Corporation, Complainant,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich, Defendants.

For Injunction.

Final Decree.

This cause came on to be heard at this Term on the 9th day of June, A. D. 1914, and was argued by counsel; and thereupon, upon consideration thereof, it was Ordered, Adjudged and Decreed as follows, viz:

That the restraining order heretofore issued on May 18th, 1914, and which on May 28, 1914, was continued in force as a temporary injunction, be and is hereby made permanent as to all of said defendants, with the exception of the defendant C. L. Burton, and as to the said C. L. Burton the said restraining order and temporary injunction be and is hereby vacated.

It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents and Harry McKenny, Ted Ishmann, Earl Gallo-
83 way, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from

interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestions of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of said American Steel Foundries; and from protecting, aiding or assisting any person, or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries for the purpose of doing, or aiding or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foun-
84 dries without first obtaining its consent; and from injuring or destroying any of the property of the said American Steel Foundries.

It is Further Ordered, Adjudged and Decreed that the complainant shall cause not less than One Hundred printed copies of this Final Decree to be posted in conspicuous places about and in the vicinity of its said plant at Granite City, Illinois; that the affidavit of the agent of the complainant so posting said notices shall be filed in the Clerk's Office stating when and where such notices were posted, and such affidavit shall be prima facie proof of the posting of such notices at such time and places as shall be therein stated.

It Is Further Ordered, Adjudged and Decreed that this injunction shall be binding upon each and all of the above mentioned defendants and upon all other persons from and after the date of this decree.

It Is Further Ordered, Adjudged and Decreed that the defendants pay the costs of the above entitled cause to be taxed by the Clerk.

J. O. HUMPHREY,
Judge United States District Court for the Southern District of Illinois.

Order of June 9, 1914.

And afterwards, to wit: on the 9th day of June A. D. 1914, the following further proceedings were had in said Court in said cause and were entered of record, to wit:—

TUESDAY, June 9th, 1914.

Court met pursuant to adjournment,
Present, the Honorable J. Otis Humphrey, Judge.

No. 14. In Equity.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL et als.

And now on this 9th day of June A. D. 1914, comes the defendants hereby by Frank C. Smith, Esq., their solicitor and on his motion, appeal to the United States Circuit Court of Appeals for the Seventh Judicial Circuit, is allowed, bond on appeal in the sum of $500.00 to be filed in thirty days and certificate of evidence to be filed within sixty days from the date hereof.

85 *Affidavit, etc.*

And afterwards, to wit: on the 23rd day of June, A. D. 1914, there was filed in the office of the Clerk of this Court a certain affidavit of Posting Decree, which said Affidavit was and is in the words and figures, following, to wit:

UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division:

In the United States District Court, June Term, A. D. 1914.

In Equity.

AMERICAN STEEL FOUNDRIES, a Corporation, Complainant,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED ISHMANN, EARL GALLOWAY, WILLIAM THORNBERG, C. THORNBERG, TOM CHURCHILL, CLAY HOLMES, C. L. BURTON, EDDIE ROACH, JOHN ALDRIDGE, ISAAC COOK, BENJ. F. LAMB, J. P. MCDONOUGH, and C. E. GERLACH, Defendants.

For Injunction.

Robert D. Pettit being first duly sworn on his oath states that he resides at 2414 G Street, Granite City, Illinois; that he was employed by the American Steel Foundries as its agent for the purpose of posting printed copies of the Final Decree of the said Court in the above entitled cause.

This affiant further states that he did, on the 18th day of June, A. D. 1914, post one true and correct printed copy of said Final Decree in each of the following places, in the City of Granite City, Illinois, viz:

1. Post of North Gate entering plant of American Steel Foundries.

2. Electric Light post near north gate and between tracks entering yard.

3. Telephone post ten yards west of Time Office entrance to Corn Products Refining Co.

4. Telegraph post 35 yards south of C. & A. Depot between north- and south-bound tracks.

5. Telegraph post along Terminal tracks ten yards from American Steel Foundries' fence and opposite east end of Cleaning & Machining Department.

6. Gate post at main railroad lead into plant, American Steel Foundries.

7. Telegraph post ten yards from above.

8. Telegraph post along switch of Terminal Railroad and opposite east end of Molding Department and 25 yards from fence.

9.)
10.)
11.) Outside wall of Time Office and Facing east.
12.)
13.)

14. Telegraph post west of freight office, Terminal Railroad and along end of switch track.

15. Telephone post North side Pacific Ave. and opposite old office of Luster Coal Co.
16. Telephone post along east fence and opposite Cleaning & Machining Wheel Department.
17. Electric light post north side Pacific Ave. and opposite C. & A. connection.
18.)
19.) Telegraph post along Pacific Avenue and south fence at
20.) high line.
21. Side gate house.
22. Northeast corner Walnut and Pacific Telegraph post.
23. Gate to dispensary West side.
24. Electric light post west side plant opposite reservoir.
25. West fence Corn Products Refining Co. Ten yards from northwest corner American Steel Foundries.
26. Telephone pole at South-west corner Washington School.
27. Telegraph pole 30 yards west of intersection of 19th and 20th St.
28. Pole north side 20th St. opposite entrance to H. C. Meyer's saloon.
29. Telephone pole northwest corner 20th & Dewey northwest.
30. Telephone pole northwest corner 20th & Illinois.
31. Telephone pole northwest corner 20th & Missouri.
87 32. Telephone pole on 20th St. in front of office of Granite City Lime & Cement Co.
33. Southeast corner 20th & A St. in front of Coudy Bros. on pole.
34. Pole, southwest corner 20th & B Sts.
35. Pole southwest corner 19th & B St.
36. Pole southeast corner 19th & B St.
37. Pole northwest corner Niedringhaus & B.
28. Pole northeast corner Niedringhaus & A.
39.) Poles at Wabash Depot on Niedringhaus Ave.
40.)
41. Pole corner at Lauff's Hotel, entrance to bar.
42. Pole corner 19th & D, opposite Cool's restaurant.
43. Pole corner 19th & D at Granite City National Bank.
44. Pole corner 19th & E St., (northwest corner) Life's Drug Store.
45. Pole south side 19th St. at Washington Theatre.
46. Pole southwest corner 19th & State, Faust Buffet.
47. Pole northeast corner 19th and State, Elks' Bar.
48. Pole southwest corner 19th & G St.
49 Pole southeast corner 20th & G St.
50. Pole northwest corner Niedringhaus & G St.
51. Pole northeast corner 22d & G St.
52. Pole northwest corner 23 & G St.
53. Pole northeast corner 22rd & Madison, Power Station.
54. Pole southeast corner 22d & Washington Ave.
55. Pole northeast corner Niedringhaus & Madison, Junction.
56. Pole southwest corner Niedringhaus & State St.
57. Pole southwest corner Niedringhaus & E St.

58. Northeast corner Niedringhaus & D St.
59. Southeast corner Niedringhaus & D St.
60. Northeast corner 18th & D St.
61. Northeast corner 17th & D St.
62. Northwest corner 17th & State St.
63. Southwest corner 18th & State St.
64. Southwest corner 20th & State St.
65. Southwest corner 21st & State St.
66. Northwest corner 22d & State St.
67. Southwest corner 23d & State St.
68. Southwest corner 23d & E Street.
69. Southwest corner 23d & D Street.
70. Southeast corner 22d & D Street.
71. Northeast corner 21st & D St.
72. Northeast corner 20th & D St.
73. Southwest corner 20th & C St.
74. Northeast corner 21st and C St.
75. Southeast corner 22 & C St.
76. Southwest corner 23d & C St.
77. Southeast corner 23d & B St.
78. Northeast corner 22d & B St.
79. Northeast corner 21st & B St.
80. Northeast corner 21st & A St.
81. Northwest corner 21st & A St.
82. Northeast corner 20th & A St.
83. Northwest corner 20th & A St.
84. Southeast corner 18th & C St.
85. Northeast corner 17th & C St.
86. Northeast corner 16th & C St.
87. 16th & Railroad opposite box factory National Enameling & Stamping Company.
88. Pole northwest of office, Commonwealth Steel Co.
89. Northeast corner Pacific Ave. & Chestnut St.
90. Southwest corner Pacific Ave. & Chestnut St.
91. Northwest corner Pacific Ave. & Olive St.
92. Southwest corner Pacific Ave. & Spruce St.
93. West fence American Steel Foundries, opposite fuel oil tanks.
94. Southwest corner Illinois Ave. and 21st St.
95. Southeast corner Illinois Ave. & 22d St.
96. Northeast corner Illinois Ave. & 23d St.
97. Northwest corner 20th & R. R. Crossing.
98. Southwest corner 20th & railroad crossing.
99. Southwest corner 19th & railroad crossing.
100. Opposite flagging shanty, Niedringhaus & Railroad crossing.
101. South side Pacific Ave. opposite compton Saloon, that each of said places was a conspicuous place, and that each of said notices was conspicuously posted, and that each of said notices was about or in the vicinity of the said plant of the American Steel Foundries in Granite City, Illinois; that the printed copy of the Final Decree hereto annexed is a true and correct copy of each of said copies so posted.

ROBERT D. PETTIT.

89 STATE OF ILLINOIS,
County of Madison, ss:

Before me, a Notary Public, in and for the said County and State appeared the above named Robert D. Pettit, personally known to me to be such person, who being first duly sworn on his oath states that the matters and things in the foregoing affidavit are true of his own knowledge.

WM. P. ANSON,
[L. S.] *Notary Public.*

Indorsed: Aff'd't of Posting Decree. Filed Jun- 23, 1914. R. C. Brown, Clerk.

Final Decree.

UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division:

In the United States District Court, June Term, A. D. 1914.

In Equity.

AMERICAN STEEL FOUNDRIES, a Corporation, Complainant,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich, Defendants.

For Injunction.

Final Decree.

This cause came on to be heard at this Term on the 9th day of June, A. D. 1914, and was argued by counsel; and thereupon, upon consideration thereof, it was Ordered, Adjudged and Decreed as follows, viz:

That the restraining order heretofore issued on May 18th,
90 1914, and which on May 28, 1914, was continued in force as a temporary injunction, be and is hereby made permanent as to all of said defendants, with the exception of the defendant C. L. Burton, and as to the said C. L. Burton the said restraining order and temporary injunction be and is hereby vacated.

It is further Ordered, Adjudged and Decreed by the Court that the said defendant, the Tri-City Central Trades Council, its officers and agents and Harry McKenny, Ted Ishmann, Earl Galloway,

William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestions of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of said American Steel Foundries; and from protecting, aiding or assisting any person, or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries for the purpose of doing, or aiding or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the said American Steel Foundries.

It Is Further Ordered, Adjudged and Decreed that the complainant shall cause not less than One Hundred printed copies of this Final Decree to be posted in conspicuous places about and in the vicinity of its said plant at Granite City, Illinois; that the affidavit of the agent of the complainant so posting said notices shall be filed in the Clerk's Office stating when and where such notices were posted, and such affidavit shall be prima facie proof of the posting of such notices at such time and places as shall be therein stated.

It Is Further Ordered, Adjudged and Decreed that this injunction shall be binding upon each and all of the above mentioned defendants and upon all other persons from and after the date of this decree.

It Is Further Ordered, Adjudged and Decreed that the defendants pay the costs of the above entitled cause to be taxed by the Clerk.

J. O. HUMPHREY,
Judge United States District Court for the Southern District of Illinois.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, R. C. Brown, Clerk of the District Court of the United States for the Southern District of Illinois, do hereby certify that the above and foregoing is a true and complete copy of the Decree entered in the cause wherein the American Steel Foundries is complainant, and the Tri-City Central Trades Council and others are the defendants, as the same appears from the records and files now in my office remaining.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said United States District Court at my office
92 in Springfield, Illinois, in said District, this 16th day of June, A. D. 1914.

R. C. BROWN,
Clerk.

Order of July 7, 1914.

And afterwards, to wit: on the 7th day of July, A. D. 1914, the following, further proceedings were had in said Court in said cause and were entered of record, to wit:—

In the United States District Court for the Southern District of Illinois. June Term, A. D. 1914.

No. 14.

AMERICAN STEEL FOUNDRIES, Complainant,

vs.

TRI-CITY CENTRAL TRADES COUNCIL et al., Defendants.

Appeal from the Southern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit.

Cost Deposit: Security Order.

The defendants herein having filed a petition to appeal this case to the United States Circuit Court of Appeals for the Seventh Circuit, to

reverse the decree entered herein, on the 9th day of June, 1914; it is hereby ordered that the defendants, or either of them deposit five hundred dollars ($500), in lawful money of the United States, with the clerk of this court, in lieu of a bond, as security for the costs of said appeal.

Dated July 7, 1914.

HUMPHREY,
Judge.

Certificate of Deposit.

I do hereby certify that there has been deposited with me this date, the sum of $500, lawful money of the United States, as provided for by the above order.

July 7, 1914.

R. C. BROWN,
Clerk of said Court.

Filed Jul- 7, 1914. R. C. Brown, Clerk.

93 Filed July 7, 1914.

And afterwards, to wit: on the 7th day of Juy A. D. 1914, there was filed in the office of the Clerk of this Court a certain Petition for Appeal, which said Petition was and is in the words, figures, following, to wit:—

In the United States District Court, Southern District of Illinois, June Term, A. D. 1914.

In Equity.

AMERICAN STEEL FOUNDRIES, Complainant,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich, Defendants.

Petition for Appeal.

To the Honorable Judge of said Court:

The above named defendants, deeming themselves aggrieved by the decree made and entered in the above entitled cause on the 9th day of June, 1914, hereby appeal from the sail Order and Decree to the United States Circuit Court of Appeals, for the Seventh Circuit, for the reasons specified in the assignment of errors filed herewith, and said defendants pray that this appeal may be allowed and that a transcript of the record, proceedings, and papers, upon which said order and decree was made, duly authenticated, may be sent

to the United States Circuit Court of Appeals, for the Seventh Circuit.

Dated July 7, 1914.

F. C. SMITH,
Solicitor for Defendants.

Filed Jul- 7, 1914. R. C. Brown, Clerk.

94 And afterwards, to wit: on the 7th day of July A. D. 1914, there was filed in the office of the Clerk of this Court a certain assignment of errors, which said assignment of errors was and is in the words and figures, following, to wit:

In the United States District Court, Southern District of Illinois, June Term, A. D. 1914.

In Equity.

AMERICAN STEEL FOUNDRIES, Complainant,

vs.

TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich, Defendants.

Appeal from the District Court to the U. S. Circuit Court of Appeals, Seventh Circuit.

Assignment of Errors.

And now on this 7th day of July, 1914 came the above named defendants, Tri-City Central Trades Council, Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich, and say that the decree made and entered herein on the 9th day of June, 1914, granting the injunction prayed for in the bill, is erroneous, and against the just rights of said defendants, for the following reasons:

First. The Court was *y*ithout jurisdiction to hear and determine said cause.

Second. The cause was not one arising under the constitution, or the act of Congress.

Third. The Court erred in not dismissing complainant's bill.

Fourth. The decree is not supported by the evidence.

95 Fifth. Because as it appears from the record in this cause, complainant was not entitled to the injunction granted in said interlocutory order or decree, and its application for same should have been refused, and the restraining order theretofore granted therein, should have been dissolved. And complainant was not entitled to a permanent injunction as set forth in such final decree.

Sixth. Because, as it appears from the record in this cause neither the defendants, nor their agents, servants, or attorn-ys had, prior to the said decree, in any way interfered with the operation of the Foundry in question, nor did the defendants or either of them in any manner interfere, or attempt to interfere with the men employed at such foundry.

Seventh. Because, the said defendant, Tri-City Central Trade Council did not through its officers, agents or attorneys threaten any of the employees of said foundry with violence, or threaten them with bodily injury; nor did said other defendants threaten any of said employees of said foundry with any violence.

Eighth. Because the complainant was not entitled to an injunction prohibiting the defendants while on the streets of Granite City or while in proximity to such foundry, from trying to persuade strike breakers from taking the places of the strikers.

Ninth. Because the complainant was not entitled to an injunction prohibiting the defendants from stopping employees of complainant and suggesting to them that they should not work at such plant while a strike was on.

Tenth. Because the complainant was not entitled to an injunction prohibiting the defendants from assembling, or congregating, in proximity of said foundry, or on the streets leading to such foundry.

Eleventh. Because the complainant was not entitled to an injunction prohibiting the defendants from placing any picket, or pickets, upon the streets leading to such foundry, whose duty it was to notify those entering said foundry that there was a strike on.

Twelfth. Because the findings of the Court are too general and deprive the defendants of rights guaranteed to them by the constitution of the United States.

Wherefore, the said defendants pray that the said decree be reversed, and that said District Court of the United States for
96 the Southern District of Illinois, may be directed to enter a decree dissolving and vacating the injunction granted by it under said decree.

THE TRI-CITY CENTRAL TRADES COUNCIL,
HARRY McKENNY,
TED ISHMANN,
EARL GALLOWAY,
WILLIAM THORNBERG,
C. THORNBERG,
TOM CHURCHILL,
CLAY HOLMES,
C. L. BURTON,
EDDIE ROACH,
JOHN ALDRIDGE,
ISAAC COOK,
BENJ. F. LAMB,
J. P. McDONOUGH, and
C. E. GERLICH,
By F. C. SMITH, *Solicitor.*

Enter.

—— ——, *Judge.*

Filed, Jul- 7, 1914. R. C. Brown, Clerk.

And afterwards, to wit: on the 7th day of July A. D. 1914, the following further proceedings were had in said Court in said cause and were entered of record to wit:—

97 In the District Court of the United States for the Southern District of Illinois, Southern Division.

TUESDAY, July 7th, 1914.

Court met pursuant to adjournment.

Present, the Honorable J. Otis Humphrey, Judge.

No. 14. In Equity.

AMERICAN STEEL FOUNDRIES

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL et als.

Bill for Injunction.

Order Granting Appeal, Etc.

Now come the defendants, by their solicitor, and file an Assignment of Errors and Petition praying an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order and decree rendered herein, and thereupon it is ordered:

That said appeal be granted upon said defendants giving a deposit in the sum of $500.00, and thereupon defendants tender a draft for the said sum of $500.00 in lieu of bond, which is accepted by the Court, and that a citation be issued citing and admonishing said complainant to be and appear in said Circuit Court of Appeals within thirty days from the date this order is signed by the Judge.

July 7th, 1914.

Filed, July 7, 1914. R. C. Brown, Clerk.

And afterwards, to wit: on the 4th day of August A. D. 1914, there was filed in the office of the Clerk of this Court a certain Præcipe for record, which said præcipe, was and is in the words and figures, following, to wit:—

98 Filed Aug. 4, 1914.

In the United States Court, Southern District of Illinois.
June Term, 1914.

Equity.

AMERICAN STEEL FOUNDRIES, Appellee,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, et al., Appellant.

Appeal.

To the Clerk of said Court:

You will please prepare transcript of record in the above entitled cause and incorporate therein the following:

First. Bill of complaint.
Second. Motion for temporary injunction.
Third. Order setting same.
Fourth. Restraining order.
Fifth. Chancery Subpœna and return.
Sixth. Order continuing hearing.
Seventh. Defendant's answer.
Eighth. Replication to answer.
Ninth. Trial of cause in part.
Tenth. Abstract of evidence.
Eleventh. Decree.
Twelfth. Affidavit of posting of final decree.
Thirteenth. Order fixing bond on appeal, etc.
Fourteenth. Cash deposit order in lieu of bond.
Fifteenth. Petition for appeal.
Sixteenth. Assignment of errors.
Seventeenth. Order allowing appeal.
Eighteenth. Citation.
Nineteenth. Certificate of Clerk.

F. C. SMITH.
Solicitor for Appellants.

Indorsed: Præcipe for record etc., Filed Aug. 4, 1914, R. C. Brown, Clerk.

99 *Order of Aug. 5, 1914.*

And afterwards, to wit: on the 5th day of August A. D. 1914, the following further proceedings were had in said Court in said cause and were entered of record to wit:—

WEDNESDAY, August 5th, 1914.

Court met pursuant to adjournment,

Present, the Honorable J. Otis Humphrey, Judge.

No. 14. In Equity.

AMERICAN STEEL FOUNDRIES

vs.

TRI-CITY CENTRAL TRADES COUNCIL et als.

And now on this 5th day of August A. D. 1914, comes the defendants in this cause by Frank C. Smith, Esq., their solicitor and on his motion it is ordered by the Court that the said defendants time in which to file the transcript of record in this cause in the United States Circuit Court of Appeals, be and the same is hereby extended to sixty days from the 7th day of July, A. D. 1914.

Certificate of Clerk.

UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division, ss:

I, R. C. Brown, Clerk of the District Court of the United States for the Southern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be a true and complete copy of all papers filed and proceedings had in a certain cause lately determined in this Court, wherein American Steel Foundries was complainant and The Tri-City Central Trades Council, et als. were defendants, (and mentioned in the foregoing praecipe for record), as fully as the same now appear on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Springfield, in said District, this 18th day of August, A. D. 1914.

R. C. BROWN,
Clerk.

[SEAL.]

100 *Citation and Service.*

And afterwards, to wit: on the 15th day of July, A. D. 1914, there was filed in the office of the Clerk of this Court a certain Citation and Service thereon, which said Citation, was and is in the words and figures, following, to wit:—

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to American Steel Foundries, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, in the State of Illinois, within thirty days from the date hereof, pursuant to an Order Allowing an Appeal, entered in the Clerk's Office of the District Court of the United States for the Southern District of Illinois, wherein The Tri-City Central Trades Council, Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich, are complainants and appellants and you are defendant and appellee, to show cause, if any there be, why the Judgment rendered against the said appellant in error as in the said Order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. Otis Humphrey, Judge of the District Court of the United States, this 7th day of July, in the year of our Lord one thousand nine hundred and fourteen.

HUMPHREY,
U. S. District Judge.

Service of above Citation accepted this 14th day of July, 1914.
WM. E. WHEELER,
Solicitor for American Steel Foundries.

Indorsed: Citation and Service thereon. Filed Jul- 15, 1914. R. C. Brown, Clerk.

101 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 100, inclusive, contain a true copy of the printed record, printed under my supervision, and filed October 27th, 1914, on which this cause was argued, heard and determined in the case of The Tri-City Central Trades Council et al. vs. American Steel Foundries No. 2157, October Term, 1913, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-sixth day of February, A. D. 1917.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court
of Appeals for the Seventh District.

102 At a Regular Term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Room, in the City of Chicago, in said Seventh Circuit on the seventh day of October, 1913, of the October Term in the year of our Lord, one thousand nine hundred and thirteen, and of our Independence the one hundred and thirty-eighth year.

And afterwards, to-wit: On the twenty-sixth day of August, 1914, in the October term last aforesaid, came the appellee, by its counsel, Mr. Wm. E. Wheeler, and filed in the office of the Clerk of this Court his appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1913.

No. 2157.

THE TRI-CITY CENTRAL TRADES COUNCIL et al., Appellants,

vs.

AMERICAN STEEL FOUNDRIES, Appellee.

The Clerk will enter my appearance as counsel for the Appellee.

WM. E. WHEELER.

Endorsed: Filed Aug. 26, 1914. Edward M. Holloway, Clerk.

At a Regular Term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit on the sixth day of October, 1914, of the October Term in the year of our Lord, one thousand nine hundred and fourteen, and of our Independence the one hundred and thirty-ninth year.

103 And afterwards, to-wit: On the thirtieth day of December, 1914, in the October term last aforesaid, there was filed in the office of the Clerk of this Court a certain Stipulation, which said Stipulation is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, January Term, 1915.

Appeal No. 2157.

TRI-CITY CENTRAL TRADES COUNCIL et al., Appellants,

vs.

AMERICAN STEEL FOUNDRIES, Appellee.

It is hereby stipulated that the above entitled cause may be set down for oral argument, in said Court on Tuesday, Jan. 19, 1915.
Dated East St. Louis, Ill., Dec. 24, 1914.

F. C. SMITH,
Attorney for Appellants.
WM. E. WHEELER,
Attorney for Appellee.

Endorsed: Filed Dec. 30, 1914. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the fifth day of January, 1915, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, January 5, 1915.

Court met pursuant to adjournment and was opened by proclamation of Crier.

194 Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. William H. Seaman, Circuit Judge.
Hon. Christian C. Kohlsaat, Circuit Judge.
Hon. Julian W. Mack, Circuit Judge.
Edward M. Holloway, Clerk.
John J. Bradley, Marshal.

Before:

Hon. Francis E. Baker, Circuit Judge.
Hon. Christian C. Kohlsaat, Circuit Judge.
Hon. Julian W. Mack, Circuit Judge.

2157.

THE TRI-CITY CENTRAL TRADES COUNCIL et al.

vs.

AMERICAN STEEL FOUNDRIES.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

It is ordered by the Court that this cause be, and the same is hereby set down for hearing January 26, 1915.

And afterwards, to-wit: On the twenty-sixth day of January, 1915, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, January 26, 1915.

Court met pursuant to adjournment and was opened by proclamation of crier.

105 Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Christian C. Kohlsaat, Circuit Judge.
Hon. Julian W. Mack, Circuit Judge.
Edward M. Holloway, Clerk.
John J. Bradley, Marshal.

2157.

THE TRI-CITY CENTRAL TRADES COUNCIL et al.

vs.

AMERICAN STEEL FOUNDRIES.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. F. C. Smith, counsel for appellant, and by Mr. William E. Wheeler, counsel for appellee, and the Court having heard the same takes this matter under advisement.

At a Regular Term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room in the City of Chicago, in said Seventh Circuit, on the fifth day of October, 1915, of the October term in the year of our Lord one thousand nine hundred and fifteen, and of our Independence the one hundred and fortieth year.

And afterwards, to-wit: On the twenty-third day of May, 1916, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

106 TUESDAY, May 23, 1916.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Christian C. Kohlsaat, Circuit Judge.
Hon. Julian W. Mack, Circuit Judge.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Edward M. Holloway, Clerk.
John J. Bradley, Marshal.

Before:

Hon. Christian C. Kohlsaat, Circuit Judge.
Hon. Julian W. Mack, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.

2157.

THE TRI-CITY CENTRAL TRADES COUNCIL et al.

vs.

AMERICAN STEEL FOUNDRIES.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

It is ordered by the Court that this cause be re-argued and set down for hearing on June 8, 1916.

And afterwards, to-wit: On the eighth day of June, 1916, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:—

85

107 THURSDAY, June 8, 1916.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Christian E. Kohlsaat, Circuit Judge, presiding.
Hon. Julian W. Mack, Circuit Judge.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. Arthur L. Sanborn, District Judge.
Edward M. Holloway, Clerk.
John J. Bradley, Marshal.

Before:

Hon. Julian W. Mack, Circuit Judge.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.

2157.

TRI-CITY CENTRAL TRADES COUNCIL et al.

vs.

AMERICAN STEEL FOUNDRIES.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. F. C. Smith, counsel for appellants, and by Mr. William E. Wheeler, counsel for appellee, and the Court having heard the same takes this matter under advisement.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States
108 Court Room in the City of Chicago, in said Seventh Circuit on the third day of October, 1916, of the October term in the year of our Lord one thousand nine hundred and sixteen and of our Independence the one hundred and forty-first year.

And afterwards, to-wit: On the sixth day of December, 1916, in the October term last aforesaid, there was filed in the office of the Clerk of this Court the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:—

109 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term and Session, 1915.

No. 2157.

THE TRI-CITY CENTRAL TRADES COUNCIL, HARRY MCKENNY, TED Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough and C. E. Gerlich, Appellants,

vs.

AMERICAN STEEL FOUNDRIES, Appellee.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

Before Mack, Alschuler and Evans, Circuit Judges.

Appellants, herein called defendants, appeal from the final decree entered in favor of appellee, herein called plaintiff, enjoining defendants as follows:

"It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents and Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advise, or under the direction, control or advise of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged
110 in the employ of the American Steel Foundries in connection with its business or its foundry in the city of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employes of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employes of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of

said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employes, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

Plaintiff instituted this suit to prevent alleged threatened injury to its business and threatened destruction of its manufacturing plant, located at Granite City, Illinois, claimed to be worth $1,000,000 which it alleges the Tri-City Trades Council, a labor organization, and other defendants, former employes of plaintiff or mem-
111 bers of the Council, were injuring and threating to destroy.

It alleges The Tri-City Trades Council attempted to force plaintiff to raise the wage paid its employes and to accomplish its object called a strike of plaintiff's employes. In the course of the strike picketing was resorted to, and the defendants sought the support of nonstriking and prospective employes. Plaintiff further claimed that its employes were assaulted by defendants and by those engaged in picketing the shops, and that prospective employes had been so intimidated by defendants that they refused to enter plaintiff's employment.

The gravamen of the plaintiff's bill is found in the following, therefrom:

"Your orator further represents that the said defendants have combined and conspired to prevent your orator from employing skilled laborers at its plant, although such skilled laborers and your orator have agreed upon terms of employment that are mutually agreeable and satisfactory; that in carrying out such combination and conspiracy the defendants began picketing said plant of your orator on or about April the 23rd, 1914; that the said defendants on April 23rd and since that time have caused various numbers of men or pickets, to wit: five to thirty men to be stationed adjacent to the main gate of your orator's said plant, which said pickets from that day until the present time have threatened to assault, mistreat and injure various of the employes of your orator unless said employes ceased from their work; that said defendants so combining did on April 29th, 1914 cause two of your orator's employes to be assaulted by said pickets," etc.

Defendants denied any and all acts of violence or assaults of

any nature. On the other hand, they claimed that strikebreakers attempted to shoot the striking employes, and were urged so to do by representatives of plaintiff.

Defendants also denied the existence of any unlawful conspiracy among them, but did admit:

"that said Tri-City Central Trades Council did place certain ones on certain streets and avenues leading to said plant charged with doing picket duty, but such ones were stationed 100 yards from such mill, and they were instructed to notify all persons who sought to enter the plant, that there was a strike on, because of such reduction in wages, and such pickets were instructed to use all honorable means to persuade such ones to not enter such plant, and not to
112 take the places of the laboring men, who had gone on a strike on account of such reduction of wages."

The District Judge in rendering his opinion said:

"This evidence clearly shows that this union, this trades council, by the testimony of its officers entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal."

Speaking of picketing he said:

"However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position, and having these cases frequently before me, has taught me that there is no such thing as peaceful picketing."

Defendants attack the decree on three grounds:

(*a*) The evidence does not justify the issuance of any injunction.

(*b*) The restraining order is too broad and restrains defendants from doing lawful acts.

(*c*) The court is without jurisdiction, because the amount involved does not exceed $3,000.

EVANS, *Circuit Judge,* delivered the opinion of the court.

Defendants' claim that the court was without jurisdiction is without merit. The necessary diversity of citizenship appears. The amount involved exceeds $3,000. It was not necessary that $3,000 worth of property should be destroyed before the federal court acquired jurisdiction. The alleged threatened damage far exceeded the statutory sum necessary to give the district court jurisdiction.

Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which if carried out would have resulted in the destruction of property. The district judge heard and saw the witnesses, and we accept his conclusion that such evi-

dence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.

113 But the court also enjoined the defendants

"from picketing or maintaining any picket or pickets on or about the streets leading to the premises of the plaintiff."

And the order continued,

"It is further ordered, * * * that the said defendants * * * be and are perpetually restrained and enjoined * * * from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employes in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid."

The obvious effect and purpose of this decree was, among other things, to prevent all picketing by the defendants or others similarly interested, and to prevent these parties from persuading their fellow-employes to join them in their effort to secure what the strikers apparently considered the laborer's just demands.

In Iron Molders' Union 125 Milwaukee v. Allis-Chalmers Co., 166 Fed. 45, the rule is so well stated that we quote from it the following,

"The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished. In the guise of picketing, strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault. But from the evidence it can always be determined whether the efforts of the pickets are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgments. Prohibitions of persuasion and picketing, as such, should not be included in the decree."

Labatt in his work on Master and Servant, Vol. 7, Pg. 8364, says,

"Attendance in the vicinity of the employer's place of busi-
114 ness for the purpose of obtaining information as to those at work there, or of communicating the information that a strike is in progress, to those who may resort for employment, is uniformly regarded as lawful even where the right to maintain pickets for the purpose of persuasion is denied."

The same writer further says,

"The preponderance of opinion is to the effect that attendance even in numbers, for the purpose of lawfully persuading others not to work, is permissible, so long as it is not carried on in such a manner as to intimidate persons at work, or seeking employment, or to subject them to undue annoyance, or to interfere with the free access to the employer's premises."

Further authorities in support of the rule laid down in the Iron Molders' Union v. Allis-Chalmers Co. case supra are, Gray v. Building Trades Council, 91 Minn. 171; Karges Furniture Co. v. A. W. Local Union, 165 Ind. 421; Everett v. Typo. Union, 105 Va. 188; In re Heffron, 179 Mo. App. 639; Jones v. Maher, 116 N. Y. Supp. 1126; Jones v. Van Winkle Gin & Mach. Works, 131 Ga. 336; Pope Motor Car Co. v. Keegan, 150 Fed. 148.

But it is contended that the decree in these respects was proper because,

(*a*) The restraining order does not prohibit picketing per se, but restrains defendants from carrying out an unlawful conspiracy to destroy plaintiff's business; that in order to prevent the defendants from accomplishing the unlawful object of the conspiracy, it was necessary for the court to restrain the defendants from picketing the plaintiff's works, and prohibit them from arguing their cause with plaintiff's employees.

(*b*) Defendants were not plaintiff's employes, but were mere outsiders, intermeddlers who were not truly representing the employers, but were trouble makers, fomenting strife and trouble where labor conditions and wages were entirely satisfactory to the employes.

Plaintiff's contention that a court may restrain lawful acts of striking employes when committed to carry out the purpose of an unlawful conspiracy to destroy the employer's business is supported by many authorities. Among them are Sailors' Union v. Hammond Lumber Co., 156 Fed. 450; In re Debs, 158 U. S. 564; Barnes v. Typo. Union, 232 Ill. 424; Karges v. Woodworkers' Union, supra.

If the record disclosed the existence of an unlawful con-
115 spiracy on the part of the defendants to injure or destroy plaintiff's property the court would be clearly justified in restraining lawful as well as unlawful acts committed in furtherance of such a conspiracy.

If the purpose of the undertaking complained of were purely and simply, or even primarily, interference with the plaintiff in the conduct of its business as alleged, no act, however innocent in itself, directed to that end can be said to have a lawful purpose for its doing. Indeed it may well be said that any act directed to that end is not a lawful act. If, on the other hand the object of the undertaking is lawful, then the acts calculated to effectuate the object do not necessarily become unlawful merely because they interfere with the plaintiff's conduct of its business.

The right to strike to secure higher wages and improved conditions of labor is too firmly established to necessitate further elucidation. From the record here we can reach no other conclusion than that the object of this strike was to secure for plaintiff's employes the November wage scale of the union. Nothing appears in the record to indicate that this was not in good faith, or to raise the suspicion that the strike was a mere cloak to cover a deliberate purpose to interfere with the plaintiff's conduct of its business, or to injure and destroy its business and property. The purpose being lawful, if unlawful means are used to effectuate it, such means cannot be made to reach back and taint the purpose itself with unlawfulness, and thus render unlawful all the acts in its furtherance.

In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed, as this court has held, to ascertain whom the late employer

"has persuaded or attempted to persuade to accept employment,"

and persuasion may be used to induce them to refuse or quit the employment. As stated further in the Allis-Chalmers case,

"The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. * * * Molders, having struck, in order to make their strike effective may persuade (but not coerce) other molders not to work for less wages or under worse conditions than those for which they struck,
116 and not to work for their late employer at all, so that he may be forced to take them back into his foundry at their own terms."

Undoubtedly picketing and persuasion would interfere with plaintiff's conduct of its business in that it would make it more difficult for it to retain old employes and to hire and keep new ones. Indeed the very act of striking often seriously interferes with that "free and unrestrained control and operation of the employer's business" which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike.

The laborer may be strictly within his rights although he obstructs "the free and unrestrained control and operation of the employer's business." The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employes by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business any interference with that labor is an interference with the employer's business. But whether the interference with the business is lawful or unlawful depends upon the facts in each case.

The order in the instant case fails to recognize this difference between the lawful means of interfering with another's business as an incident to the party's own right and unlawful means adopted by the same party. Methods may be considered lawful even though the employer's business is interfered with because such methods are incidental to the right of the employee, which right should be and is recognized as equal to the right of the employer.

Plaintiff's further contention that the defendants were not its employes at the time of the strike, and therefore had no right to picket or persuade by argument those about to enter plaintiff's employment is not well taken. It is true a striker is not technically an employee. The relation of employer and employee is temporarily suspended during a strike. The situation has been described as

"A relationship between employer and employe that is neither that of a general employer and employe, nor that of employer and employe seeking work from them as strangers."

Neither strike nor lockout fully terminates during the strike the relationship between the parties.

117 Among the defendants in this case there were some former employees. Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest. Under these circumstances, it cannot be said that the labor organization was an intermeddler or that its course was contrary to the wishes of its members or the wishes of the plaintiff's employees.

In so far as the decree restrains all picketing and all persuasion and all interference with the plaintiff's free and unrestrained control of its plant and the operation of its business it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this court for the modification of the decree in the Allis-Chalmers case will afford sufficient and proper guidance for the modification of the decree herein.

The decree of the district court is reversed with direction to modify same, and to enter a decree, in accordance with the views herein expressed.

A true copy.

Teste:

____ ____,

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

118 And afterwards, on the same day, to-wit: On the sixth day of December, 1916, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

WEDNESDAY, December 6, 1916.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Christian C. Kohlsaat, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Edward M. Holloway, Clerk.
John J. Bradley, Marshal.

Before:

Hon. Julian W. Mack, Circuit Judge.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.

2157.

THE TRI-CITY TRADES COUNCIL, HARRY MCKENNY, TED ISHMANN, Earl Halloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Landis, J. P. McDonough and C. E. Gerlich.

vs.

AMERICAN STEEL FOUNDRIES.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Illinois, Southern Division, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby reversed with costs;
119 and that this cause be, and the same is hereby remanded to the said District Court with direction to modify same, and to enter a decree in accordance with the views expressed in the opinion of this Court.

And afterwards, to-wit: On the third day of January, 1917, in the October term last aforesaid, there was filed in the office of the Clerk of this Court a certain Petition for a Rehearing, which said Petition for Rehearing is not copied here nor made a part of this record.

And afterwards, to-wit: On the twentieth day of January, 1917, in the October term last aforesaid, there was filed in the office of the

Clerk of this Court a certain Answer to the Petition for Rehearing, which said Answer is not copied here nor made a part of this record.

And afterwards, on the same day, to-wit: On the twentieth day of January ,1917, in the October term last aforesaid, there was filed in the office of the Clerk of this Court a certain Proof of Service of Answer to Petition for Rehearing, which said Proof of Service is not copied here nor made a part of this record.

And afterwards, to-wit: On the twenty-fourth day of January, 1917, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

120 WEDNESDAY, January 24, 1917.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. Christian C. Kohlsaat, Circuit Judge.
Hon. Julian W. Mack, Circuit Judge.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Edward M. Holloway, Clerk.
John J. Bradley, Marshal.

Before:

Hon. Julian W. Mack, Circuit Judge.
Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.

THE TRI-CITY TRADES COUNCIL et al.

vs.

AMERICAN STEEL FOUNDRIES.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

It is ordered by the Court that the petition for a rehearing in this cause be, and the same is hereby denied.

121 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 19, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel and stipulation relating thereto, the Petition for Rehearing, the Answer to the Petition for Rehearing, and the Proof

of Service of Answer) in the case of The Tri-City Central Trades Council et al. vs. American Steel Foundries, No. 2157, October Term, 1913, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-sixth day of February, A. D. 1917.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

122 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, Greeting:

Being informed that there is now pending before you a suit in which The Tri-City Trades Council et al. are appellants, and American Steel Foundries is appellee, No. 2157, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme
123 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the nineteenth day of January, ——, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

124 United States Circuit Court of Appeals for the Seventh Circuit.

No. 2,157.

TRI-CITY CENTRAL TRADES COUNCIL et al., Appellants,

vs.

AMERICAN STEEL FOUNDRIES, Appellees.

It is hereby stipulated and agreed that the certified copy of the record, with the petition for writ of certiorari, on file in the Supreme

Court, may be taken as the return by the Clerk of the Circuit Court of Appeals to the writ of certiorari, and that the Clerk may return a certified copy of this stipulation in lieu of another record.

FRANK C. SMITH,
Counsel for Appellants (Respondent).
PAM & HURD,
Counsel for Appellees (Petitioner).

Endorsed: Filed Feb. 4, 1918. Edward M. Holloway, Clerk.

125 UNITED STATES OF AMERICA,
Seventh Circuit, ss:

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Tri-City Central Trades Council et al., appellants, vs. American Steel Foundries, Appellee, is a full, true and complete transcript of the record upon which said cause was heard in the United States Circuit Court of Appeals for the Seventh Circuit, together with all proceedings in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twentieth day of February, A. D. 1918.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[Endorsed:] File No. 25,809. Supreme Court of the United States, No. 432. October Term, 1917. American Steel Foundries vs. The Tri-City Central Trades Council et al. Writ of certiorari. Filed Feb. 4, 1918. Edward M. Holloway, Clerk.

126 [Endorsed:] File No. 25,809. Supreme Court U. S. October Term, 1917. Term No. 432. American Steel Foundries, Petitioner, vs. The Tri-City Central Trades Council et al. Writ of certiorari and return. Filed February 28, 1918.

Office Supreme Court, U. S.
FILED
MAR 7 1917
JAMES D. MAHER

NO. 979

IN THE

SUPREME COURT OF THE UNITED STATES

AMERICAN STEEL FOUNDRIES,
Petitioner,
vs.
THE TRI-CITY CENTRAL TRADES COUNCIL ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI.

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

Geo. Hornstein Co., Printer, Chicago.

IN THE

Supreme Court of the United States

AMERICAN STEEL FOUNDRIES,
Petitioner,
vs.
THE TRI-CITY CENTRAL TRADES COUNCIL ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

The petition of the American Steel Foundries respectfully shows unto this Honorable Court that:

On the 18th day of May, 1914, petitioner filed its bill of complaint in the District Court of the United States for the Southern Division of the Southern District of Illinois, against the respondents, The Tri-City Central Trades Council, Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj.

F. Lamb, J. P. McDonough and C. E. Gerlich, praying, among other things, for a writ of injunction restraining the said respondents, and all other persons who have aided, abetted and assisted, as follows:

> "From in any way or manner whatsoever by use of threats, or personal injury intimidation, suggestions of dangers or threats or violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere, and from interfering by violence or threats of violence in any manner with any person, desiring to be employed by said American Steel Foundries in its said foundry or plant, and from inducing or attempting to compel or induce by threats, intimidation, force or violence or putting in fear or suggestions of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries, and that they absolutely desist and refrain from preventing any person by threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of said American Steel Foundries, and that they desist, and refrain from protecting, aiding or assisting, any person, or persons, in committing any of said acts, or from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries for the purpose of doing, or aiding or encouraging others in doing, any of the said unlawful or forbidden acts or things, and that they desist and refrain from doing any acts or things, whatever, in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or in-

terfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business, and also from ordering, directing, aiding, assisting, or in any manner abetting any person committing any or either of the acts aforesaid, and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent, and from injuring or destroying any of the property of the said American Steel Foundries."

That on said 18th day of May, 1914, a restraining order was issued in accordance with the prayer for injunction by the Judge of said District Court; on June 4, 1914, the answer of the defendants to the bill of complaint was filed, and on the same day the replication by the complainants was also filed on the 8th day of June, 1914, the cause proceeded to a final hearing upon the bill of complaint, the answer of the respondents, the replication of the petitioner to the answer, and upon the oral testimony offered on the part of the petitioner and respondents; upon the conclusion of the evidence and hearing, the court rendered his opinion, a copy of which is attached hereto as Appendix A; on the 9th day of June, 1914, a final decree was entered pursuant to the opinion of the court, from which decree an appeal was prayed and perfected to the Circuit Court of Appeals for the Seventh Circuit; on the 26th day of January, 1915, the said appeal came on for hearing in said Circuit Court of Appeals before the Honorable Frank Baker, Christian C. Kohlsaat and Julian W. Mack, Judges; on the 23rd day of

May, 1916, the Circuit Court of Appeals directed a re-argument, and upon the 8th day of June, 1916, said appeal was re-argued before Judges Julian W. Mack, Samuel Alschuler and Evan A. Evans; on the 6th day of December, 1916, the Circuit Court of Appeals reversed the decree of the District Court with directions to modify the same and to enter a decree in accordance with the views therein expressed. A copy of the opinion of said Circuit Court of Appeals is attached hereto, marked Appendix B. On the 3rd day of January, 1917, your petitioner filed its petition for re-hearing in the said United States Circuit Court of Appeals, which on the 24th doy of January, 1917, was denied.

A certified copy of the entire record of said cause in the United States Circuit Court of Appeals is herewith submitted as a part of this application, in conformity with Rule 37 of this Honorable Court concerning causes sought to be brought up from the Circuit Court of Appeals.

POINTS AND CONTENTIONS OF PETITIONER.

I.

The petitioner contends that upon the undisputed evidence in the record, supported by the findings of fact as expressed in the opinion of the Judge of the District Court, the Circuit Court of Appeals erroneously reversed the decree of the District Court.

II.

Upon the undisputed evidence, supported by the findings as expressed in the opinion of the Judge of the District Court, the Circuit Court of Appeals erroneously directed a modification of the decree of the District Court.

III.

Upon the pleadings and under the facts established by the undisputed evidence, supported by the findings of the Judge of the District Court, the law and the decisions of the Supreme Court, of the State of Illinois applied and should have been followed by the Circuit Court of Appeals.

IV.

The Circuit Court of Appeals erroneously disregarded and declined to follow the laws and the decision of the Supreme Court, of Illinois applicable to this case.

V.

The Circuit Court of Appeals erroneously based its decision upon the authority of *Iron Moulders Union* v. *Allis Chalmers Company*, 166 Fed. Rep., 45, and misapprehended the purport and applicability of the opinion in that case.

VI.

This case arose from a conspiracy of strangers to the petitioner and its employees to injure and interfere with the business of the petitioner in the absence of any controversy or dissatisfaction between the petitioner and its employees or of any strike by its employees.

VII.

The facts in the case raise questions of law not heretofore decided by this Honorable Court, which questions are important and have a general bearing upon controversies of a similar nature arising and subject to determination in various circuits of the United States.

Your petitioner offers and submits for the consideration of the court in support of its petition the brief and argument and affidavit of William E. Wheeler following on page 8, *et seq.*, and for that purpose makes the same a part of this petition.

Your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, com-

manding the said court to certify and send to this court on a day certain to be therein designated a full and complete transcript of the record and all proceedings in the said United States Circuit Court of Appeals, in the said cause therein entitled "*The Tri-City Central Trades Council et al.* v. *American Steel Foundries,* No. 2157," to the end that the said cause may be reviewed and determined by this court as provided in Section 6 of the Act of Congress entitle, "An Act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, and that your petitioner may have such other and further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said Act, and that the said judgment of the said United States Circuit Court of Appeals in the said cause, and every part thereof, may be reversed by this Honorable Court, and your petitioner will ever pray.

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

BRIEF AND ARGUMENT FOR PETITIONER.

STATEMENT OF CASE.

The petitioner is a corporation organized under the laws of the State of New Jersey, and authorized to transact business in the State of Illinois. For many years it has operated a plant at Granite City, Illinois. The plat introduced in evidence shows that its property is fenced and covers in the neighborhood of twenty acres of ground. Within the enclosure are some eight or nine buildings of various dimensions, the largest of these being of irregular dimensions of about 650 by 412 feet. The next largest building is approximately 225 feet by 425 feet. These buildings cover substantially one-third of the premises of the petitioner, are of various construction, some combustible and some non-combustible. The framework of the buildings is wood in a great many cases, and one is an entire wood building. (Rec., p. 32.)

In normal times the plant employs about 1600 men. It was operated as an "open shop," employing both union and non-union labor without discrimination. In November, 1913, because of depressed condition of business the plant closed and all employees were laid off indefinitely. On April 1, 1914, your petitioner undertook a partial resumption of operations at this plant, and a few men were employed at the plant to get it in running order. Prior to April 6, 1914, notices were posted about the works inviting

workmen at a reduced scale of wages, in some departments from two cents to nine cents per hour, and in a good half of the departments without any reduction, and on April 6th the plant opened on a twenty-five per cent basis of its rate of capacity, employing from 300 to 375 men. On the resumption of work, such men were hired as applied for employment at the reduced wage, and about eighty or ninety per cent of the employees were men who had been in the employ of the plant when it closed the preceding November. (Rec., pp. 32 and 51.) From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to your petitioner from any of the employees with regard to wages. (Rec., pp. 32 and 51.)

About the 20th day of April, 1914, the Tri-City Central Trades Council sent a committee headed by Earl Galloway, its president, to the plant of petitioner to remonstrate with the management against the reduced scale of wages. Upon their application for admission at the gate of the plant, one of the members, the president, Earl Galloway, was admitted to the office of Mr. Walcher, the manager of petitioner. **Mr. Walcher inquired of Galloway if any of the committee was or represented any of the employees of the Company, to which Mr. Galloway replied that they did not.** Mr. Walcher stated that the visit of this committee was rather peculiar; that he had never heard of any complaint from any of his employees, and was very much surprised, and stated further that if any of the employees had any complaint to make in regard to wages or working con-

ditions that he was willing to listen to them as often as may be necessary. (Rec., p. 32.)

The Tri-City Central Trades Council is an organization that is composed of six delegates from local organizations, which forms a central body. There are 37 affiliated bodies, composed of the building trades, carpenters, painters, plumbers, building laborers, plasterers, lathers, moulders, electricians, machinists, mill men, barbers, bar tenders, clerks and various other trades. Each organization is entitled to six delegates. Earl Galloway, the president, testified that the object of the Council is to better the condition of the working classes; make conditions so that they can receive more of the wealth they produce and better working conditions in general, and that his membership in the Council is by virtue of being a member of the Plumber's Union.

Promptly after the interview between Galloway and Walcher, the manager of the petitioner, the respondents entered upon a conspiracy to force the petitioner to either operate its plants upon such terms as the respondent, the Tri-City Central Trades Council, should dictate or to close its plant.

In pursuance of such conspiracy, about the 22nd of April the **Tri-City Central Trades Council declared a strike at the plant, and circulated hand bills calling upon workmen and all labor to stay away from the plant as a strike was on.** (Rec., p. 30.)

In response to this action but two men, Isaac Cook and Tom Churchill (of the 375 employed) left their work (Rec., p. 30), and these men left without even making a complaint to the management (Rec., p. 30), and left only because the strike was on and they were ordered out by the respondent, Tri-City Central Trades Council.

The respondent, the Tri-City Central Trades Council, by its "strike" having brought out only two of the men working at the plant in furtherance of the conspiracy on April 24th, 1914, placed a body of pickets about the plant. These pickets were in a number of groups, usually consisting of three or four men, up to eight or ten men, in each group. Shortly after the pickets were placed about the premises, the respondents in attempting to carry out the unlawful conspiracy started upon a course of persistent assaults and acts of intimidation, and threatened to destroy the property if necessary in order to accomplish their end. The assaults were numerous, brutal and without provocation, and finally culminated in a general riot brought on by about 200 men, consisting of the pickets and those associated with them, and among whom were recognized Galloway, the president of the Council, and others of the respondents.

Written application was made by the management of the petitioner to the Mayor for protection. Protection was promised by the Mayor, but not furnished. The Mayor was a witness in behalf of the respondent Trades Council, and testified that he was a member of the Socialist Party, and elected on that ticket as Mayor of the town; that prior to his election he was a steel worker in a steel mill for about ten years, and at the present time held an honorary membership in the Amalgamated Iron, Steel and Tin Workers, and that his sympathies were with the respondents. Application was made to the Sheriff of the County for protection, and the Sheriff promised to investigate, but neither offered nor gave the plant protection. On the 18th day of May, 1914, application was made, as above men-

tioned, to the District Court for a restraining order. The order was issued on the morning of that day, and the Marshal went to Granite City that evening to serve it. After the issuance of the restraining order, and just prior to the arrival of the Marshal, a number of pickets assaulted, without provocation, two other employees of the plant, and left them lying unconscious upon the walk. From the time the restraining order was issued to the present time, the plant has operated without any trouble, and has had an abundance of capable and efficient workmen to conduct its business.

This bill was not simply to enjoin a mob and mob violence, it was not a bill commanding the keeping of the peace, nor was it a bill to restrain the defendants from organizing a union, nor from abandoning whatever employment they were engaged in. Neither the right of any laborer or any number of laborers, nor the rights of the defendants, to quit work was challenged. The scope and purpose of the bill was only to restrain an unlawful combination and conspiracy among the defendants, not employees or representatives of employees of petitioner, from interfering with the petitioner in the operation of its plant. The conspiracy aimed at involves **no right of a union to strike, nor any right of any union to call away any of its members from the work at this plant. The bill here was to enjoin a meddler and stranger from carrying out a conspiracy to force employees to strike, when the employees, themselves, did not and would not strike—and to close down the plant of the employer unless the demands of this interloper for a change in wages was granted—the employees, themselves, not asking any change.**

BRIEF.

I.

The petitioner contends that upon the undisputed evidence in the record, supported by the findings of fact as expressed in the opinion of the Judge of the District Court, the Circuit Court of Appeals erroneously reversed the decree of the District Court.

II.

Upon the undisputed evidence, supported by the findings as expressed in the opinion of the Judge of the District Court, the Circuit Court of Appeals erroneously directed a modification of the decree of the District Court.

III.

Upon the pleadings and under the facts established by the undisputed evidence, supported by the findings of the Judge of the District Court, the law and the decisions of the Supreme Court of the State of Illinois applied and should have been followed by the Circuit Court of Appeals.

IV.

The Circuit Court of Appeals erroneously disregarded and declined to follow the laws and the decision of the Supreme Court of Illinois applicable to this case.

V.

The Circuit Court of Appeals erroneously based its decision upon the authority of *Iron Moulders Union* v. *Allis-Chalmers Company*, 166 Fed. Rep., 45, and misapprehended the purport and applicability of the opinion in that case.

VI.

This case arose from a conspiracy of strangers to the petitioner and its employees to injure and interfere with the business of the petitioner in the absence of any controversy or dissatisfaction between the petitioner and its employees or of any strike by its employees.

VII.

The facts in the case raise questions of law not heretofore decided by this Honorable Court, which questions are important and have a general bearing upon controversies of a similar nature arising and subject to determination in various circuits of the United States.

ARGUMENT.

I.

There were three issues of fact presented by the pleadings on the hearing in the District Court.

First, The combination and conspiracy of the respondents to injure and interfere with the property and business of the petitioner. There was no dispute of the facts on that issue. The respondents admitted calling the strike and the unlawful purpose thereof. The District Judge made his finding with reference to such conspiracy, as appears in his opinion (Appendix A, p. 75), as follows:

> This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trade of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fel-

lows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests; viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for the hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We wouldn't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law and there is no other view to take of it. **This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complaint from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it.**

Second, The carrying out of the conspiracy and combination through the instrumentality of pickets, violence, assaults, and threats to destroy pe-

titioner's property. While here and there some one of the respondents sought to place a different construction upon the cause and character of the assaults, nevertheless the fact, and the evidence supporting the fact, remain practically undisputed, and upon this point the District Judge made the finding, as shown in his opinion (Appendix A, p. 78), as follows:

> The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful.
>
> However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the conditions under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him.

> Now that is the law and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There can be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you.

And the Circuit Court of Appeals on this point says (Appendix B, page 85):

> "Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which, if carried out, would have resulted in the destruction of property. **The District Judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.**"

Third, That the respondent, Tri-City Central Trades Council, called the strike at petitioner's plant; that at the time such strike was called the plant of the petitioner was in peaceful operation; that at the time of the strike no complaint or dissatisfaction with reference to wages or working conditions existed among the employees of the petitioner, and none had been expressed to the petitioner or its management; **that none of the em-**

ployees of the petitioner were members of the respondents, Tri-City Central Trades Council; that the respondent, Tri-City Central Trades Council, did not represent any of the employees of the petitioner that the respondent, Tri-City Central Trades Council, was a stranger to the petitioner, and had no relationship to it; that the only men who responded to the call of the strike by the respondent Trades Council were Churchill, who was not a member of the Trades Council, but was a member of the Machinists' Union, and Cook, who was not a member of the Trades Council and had never been a member of any union.

The evidence in this regard is undisputed. The Circuit Court of Appeals, without justification in the record, and without evidence to warrant it, says (Appendix B, page 91):

> "Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest."

In view of this statement in the opinion of the Circuit Court of Appeals, we feel constrained to call this court's attention to all the evidence in the record on this subject.

Mr. Walcher, the manager of petitioner, testified (Rec., p. 30):

> "At no time between April 1, 1914, and the time the restraining order was issued was either

the defendants McKenny, Galloway, Thornberg, (William), Holmes, C. Thornberg, Burton, Roach, Aldridge, Lamb, Ishman, McDonough or Gerlich in the employ of the American Steel Foundries. The defendants Cook and Churchill were the only ones in our employ during that time."

Rec., p. 50:

"Question by the Court: If men were unmolested would you have any trouble filling all the places you want?

"A. I think not.

"Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none."

* * * * * * *

Rec., p. 51:

"Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from any one in our employ."

"When we closed in November all our employees were discharged; they were laid off indefinitely on account of closing down the plant. When we opened April the 6th we employed whoever we saw fit; whoever applied for employment at the gate. Started the plant the same as a new plant. We only had called for in round numbers, three hundred men, and laid off approximately thirteen hundred men. Eighty or ninety per cent of the employees were old men. I assume these men were members of various organizations; I can't state definitely as to that."

Earl Galloway, president of Tri-City Central Trades Council, testified (Rec., p. 57):

"I am a plumber and were never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there."

B. F. Lamb testified (Rec., p. 59):

"My business is representing the Union National Association of Machinists; I am a machinist by trade. I live in St. Louis. The Tri-City Central Trade Council is in my District, therefore I am in Granite City quite often; I have a local there and they are affiliated with the Council."

Rec., p. 61:

"I never worked for the American Steel Foundries."

W. J. Hartbeck testified (Rec., p. 62):

"I live at St. Louis, am a blacksmith, a member of the blacksmiths' union and have no connection with the Central Trades Council of Granite City."

Rec., p. 63:

"I never worked for the American Steel Foundries."

Harry McKenny testified (Rec., p. 64):

"I live in Granite City and am a steam fitter and belong to one of these unions."

Rec., p. 65:

"I am a steam fitter and did not work for the complainant in April and May, 1914. I did work for them in 1907, but quit because I was ordered to help a machinist that wasn't a union man."

Thomas Churchill testified (Rec., p. 65):

"I am a machinist. I was working for the plant when it closed down in November and

went back to work when they opened but got an increase over the new men they had, but still it was a reduction at the same time. I am connected with the machinist's labor union, am a member."

Rec., p. 66:

"At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had to take at the time being and I haven't had anything better since. I didn't get a better job. **I quit because these fellows asked me to go out.**"

Ted Ishman testified (Rec., p. 67):

"I am a craneman and reside at Granite City, a member of the cranesmen's union affiliated with the Tri-City Central Trades Council."

Rec., p. 68:

"I was not working at the plant this spring after it resumed operations."

Clay Holmes testified (Rec., p. 68):

"I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

C. E. Gerlich testified (Rec., p. 69):

"I am a machinist residing in St. Louis. I worked for the complainant but haven't for two years. I belong to the machinists' union. I work at the Commonwealth plant, about two blocks away from this plant."

Isaac Cook testified (Rec., p. 70):

"I am an electrician and belong to none of the unions. I worked at the plant about three weeks after it started up."

* * * * * * *

"I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, and **I quit because they said there was a strike on.**"

C. L. Burton testified (Rec., p. 70):

"I reside at Granite City, an Alderman of the Fifth Ward. I work at the Madison Car Shops. In April and May I was working at the Laclede Steel Plant in Madison. I never worked for the Steel Foundries."

Edward Wade testified (Rec., p. 73):

"I am a sewer man or plumber's laborer. I am Treasurer of the Central Trades Council."

E. H. Taylor testified (Rec., p. 74):

"I am an electrician, a member of their union and of the Central Trades Council. I am on the board of trustees of the Council."

* * * * * * *

"I was not working for the American Steel Foundries."

Ed Roach testified (Rec., p. 74):

"I am a machinist, a member of their union and reside in East St. Louis."

* * * * * * *

"I haven't worked for the foundries since a year ago this month."

T. M. Cavanaugh testified (Rec., p. 72):

"At the regular meeting on April 15th of the Tri-City Central Trades Council a communication was received from the Machinists' Union

requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday the 19th."

* * * * * * *

"On April 15th we had a communication from the unions representing some of the trades working at the Foundries. We had complaints from the men themselves working at the foundry. I couldn't state their names. I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

We have quoted from the evidence of all the witnesses in the case, respondent or otherwise, and the court will observe that **none of them who was a member of the Trades Council was working for or was an employee of the petitioner at the time in question.** The only two employees of the petitioner, as we have above shown, who quit because of the interference by the respondent, Trades Council, were Cook, who was **not** a member of the Trades Council nor a member of any union, and Churchill, who was **not** a member of the Trades Council, though claiming to be a member of the Machinists' Union. The testimony of Cavanaugh does not support the statement in the opinion of the Circuit Court of Appeals that "many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council."

Cavanaugh testifies that they had complaints from the men themselves working at the foundry; that he can't state their names, nor state the name of any employee who made any complaint. Surely this testimony of Cavanaugh cannot be construed into proof sustaining the statement of the Circuit Court of Appeals just quoted. We repeat there is no evidence in this record that any of the employees of the petitioner except one, Churchill, was a member even of any union. The record is barren of any connection or relationship between the Tri-City Central Trades Council and the petitioner, or its employees.

II.

THE RULE IN ILLINOIS SHOULD PREVAIL.

The bill of complaint filed by the petitioner is based upon two sections of the Criminal Code of the State of Illinois. First, Section 46, Chapter 38, which reads as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * **business or employment or property of another** * * * they shall be deemed guilty of conspiracy, and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000, or both."

Then Section 158 of the same chapter, reading thus:

> "If any two or more persons shall combine **for the purpose of depriving the owner or pos-**

sessor of property of its lawful use and management, or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."

The law of Illinois applicable to the case at bar, is well settled.

Barnes v. *Typographical Union,* 232 Ill., 425, in which Justice Cartwright says, at page 431:

> "It is clear that the union and its members were not in competition with the complainant in respect to labor or anything else. The members of the union had left the service of the complainants, and their only purpose was to prevent the complainant from carrying on their business. They were endeavoring to compel the complainants to submit to their dictation by depriving the complainants of their legal right to employ such laborers as they might choose. If there is a combination to injure a person because he refuses to comply with some demand where he has a legal right to refuse, there is no way of classifying such acts in furtherance of such purpose as competition. The acts alleged in the bill were directed primarily against the complainants for the purpose of doing them harm, and that sort of action is not lawful competition.
>
> "The whole scheme as set out in the bill was to injure the complainants for the purpose of compelling them to yield to the union their absolute legal right to manage their own business in their own way * * * **it follows that any intereference with that right whether by threats or intimidation or by persuasion accompanied by actual malice is a legal wrong.**"

At page 434 the court further says:

"The facts stated in the bill authorized an injunction to prevent carrying out the scheme of the defendants.

"**It is next contended that if any injunction was authorized, the injunction granted was too broad in enjoining appellants from peaceful picketing of complainants' premises and from congregating about or near their places of business for the purpose of inducing or soliciting employees to leave the employment.** It is contended that a peaceful picket line around a shop is entirely lawful. **But this court has held otherwise in Franklin Union v. People, supra, where endorsement was given to the doctrine of Beck v. Railway Teamsters' Protective Union, 118 Mich., 407, by quoting therefrom, as follows: 'To picket complainants' premises in order to intercept their teamsters or persons going there to trade is unlawful. It, itself, is an act of intimidation and an unwarrantable interference with the right of free trade.** The highways and public streets must be free to all for the purposes of trade, commerce and labor. The law protects the buyer, the seller, the merchant, the manufacturer and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done ten or ten hundred feet away.' The court also gave its approval to the decision in *Vegelahn* v. *Guntner,* 167 Mass., 92. In that case a patrol of two men in front of the plaintiff's factory, maintained as one of the means of carrying out the defendants' plan, was held to be an unlawful interference with the rights of the employer and the employed. The patroling or picketing of the premises was considered to have elements of intimidation, **and the court decided that the motive of obtaining better wages for themselves on the part of the defendants did not justify maintaining a patrol**

in front of the complainant's premises as a means of carrying out their conspiracy. The very fact of establishing a picket line is evidence of an intention to annoy, embarrass and intimidate, whether physical violence is resorted to or not. There have been a few cases where it was held that picketing, by a labor union, of a place of business is not necessarily unlawful if the pickets are peaceful and well behaved, but if the watching and besetting of the workmen is carried to such a length as to constitute an annoyance to them or their employer it becomes unlawful. But manifestly that is not a safe rule and furnishes no fixed or certain standard of what is lawful or unlawful. Any picket line must result in annoyance both to the employer and the workmen, no matter what is said or done, and to say that the court is to determine by the degree of annoyance, whether it shall be stopped or not would furnish no guide, but leave the question to the individual notions or bias of the particular Judge. To picket the complainants' premises was in itself an act of intimidation and an unwarrantable interference with their rights. Pickets were, in fact, guilty of actual intimidation and threats, but if they had not been, the complainants were entitled to be protected from the annoyance.

"Another supposed right of the defendants asserted by counsel is the exercise of the power of persuasion, and it must be conceded that argument and persuasion are lawful if not directed to the accomplishment of an illegal and unlawful purpose. The object of the defendants as set forth in the bill was illegal, and if there is a malevolent intent to produce an illegal result, and it is produced, it makes no difference whether it is accomplished by mere persuasion or by physical violence. (Curren v. Galen, 152 N. Y., 33.)"

In the case of *Doremus* v. *Hennessey*, 176 Ill., 608, the court speaks in the following language:

> "The law is well settled that every person shall be protected in the right to enter into contracts or in refusing to do so, as he shall deem best for the advancement of his own interests, without interference by others. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, **and any attempt to compel an individual firm or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees, is not only unlawful and actionable, but is an interference with the exercise of the highest civil right.** * * * **All parties to a conspiracy to ruin the business of another because of his refusal to do some act against his will or judgment are liable for all overt acts, illegally done pursuant to such conspiracy and for the subsequent loss, whether they were active participants or not.**"

The Circuit Court of Appeals saw fit to ignore and disregard the law of the State of Illinois as also the decisions of the Supreme Court of that State. It undertook to decide this case upon the authority of *Iron Moulders' Union* v. *Allis-Chalmers Company*, 166 Fed., 45. That case we insist is not authority in support of the decision also that the further authorities cited in support of the rule laid down in *Iron Moulders' Union* v. *Allis-Chalmers Company, supra*, deal with an entirely different kind of cases than the one at bar, and do not sustain the opinion of the Circuit Court of Appeals. Indeed, in *Iron Moulders' Union* v. *Allis-Chalmers Company*,

supra, Judge Grosscup in a separate opinion demonstrates that it is inapplicable to the case at bar, and prophetically anticipated just such a misinterpretation of that decision as happened in the case at bar.

In each of the cases cited by the Circuit Court of Appeals in support of its opinion there **existed a controversy between employer and employee**; a strike had been called by **the employees** and **not by any stranger** to the employer, nor **outside organization**, as in the case at bar.

As matter of fact it cannot be said that there ever was a strike in the ordinary acceptation of the term. There was here a deliberate conspiracy and undertaking on the part of this Trades Council for reasons and purposes of its own, to strike down the industry of the petitioner, to force and coerce the employees who were satisfied and contented to leave their employment, to dictate to the petitioner terms and conditions upon which it could employ its men; to substitute itself for the employer and the employee as the contracting party, and when successful in securing the withdrawal of only two men from the plant, proceeded to intimidate, assault, beat and injure the employees of the petitioner, and that not being sufficiently effective threatened to destroy the petitioner's plant.

The lexicographers have defined what a strike is, and in every instance the definition proceeds upon the theory that it is bottomed upon a controversy between **employer** and **employee**.

Bouvier's Law Dictionary defines a strike as follows:

> "A combined effort by workmen to obtain higher wages or other concessions from their employers by stopping work at a pre-concerted time."

The evidence in this record shows there was no such act by the workmen and employees of this petitioner.

Black's Law Dictionary, defining a strike, says:

> "The act of a body of workmen employed by the same master in stopping work altogether at a pre-arranged time and refusing to continue until higher wages or shorter time or some other concession is granted."

The evidence in this record shows that the body of workmen employed by the petitioner did not stop work at a prearranged time or any other time.

The Century Dictionary defines a strike to be:

> "A concerted or joint quitting of work by a body of men or women for the purpose of coercing their employer in someway as when higher wages or shorter hours are demanded or a reduction of wages is resisted—a joint refusal to work as a coercive measure."

The evidence in the case shows the men did not quit work for the purpose of coercing petitioner; on the contrary it shows the men were contented and without complaint.

In *Iron Moulders' Union* v. *Allis-Chalmers Company, supra*, the controversy arose out of a **strike of the employees** of the Allis-Chalmers Company as a result of a united effort on the part of the members of all foundries unions. And in the separate opinion Judge Grosscup called attention to the differentiation between a case involving a strike of

the employees actually pending, as against an effort, without such strike existing, to interfere with the business of the complainant, as occurred in the case at bar. Judge Grosscup says:

> "And it is with respect to this somewhat anomalous relationship that, as I understand it, this opinion speaks; a statement that it seems to me ought to be made to confine the opinion to the actual situation to which it is intended to relate—to differentiate what we say from what might arise in cases where, **neither strike nor lock-out pending,** persuasion is resorted to to induce other employers not to employ given applicants for employment, or to persuade employees not to take employment with given employers, **upon which questions we do not, as I understand it, express** any opinion."

Judge Grosscup in this separate opinion defines a strike as follows: "A strike is cessation of work **by employees** in an effort to get for the employees more desirable terms."

The court will find that in each of the other cases cited in support of the authority of *Iron Moulders Union* v. *Allis-Chalmers Company, supra,* there was a dispute between employer and employee and an actual "strike" by the employees.

In *Pope Motor Car Co.* v. *Keegan,* 150 Fed., 148, it appears affirmatively that there was a strike by the employees of the Pope Motor Car Company, and the strike was due to a refusal to submit to the dictation of Keegan and Keck, who were officials of the International Association of Machinists, **and that all the defendants in that case except Keegan and Keck had been in the employ of the complainant**

company, and at the time of the filing of the bill were out on a strike.

In *Karges Furniture Co.* v. *Amalgamated Wood Workers' Local Union*, 165 Ind., 421, it appears on April 1, the demands upon the employers not having been complied with, **all the plaintiff's employees but about twenty non-members of the union, each one acting voluntarily in concert with others, and in pursuance of the agreement and vote, quit their employment and left the plaintiff's factory.**

In *Everett* v. *Typo Union*, 105 Va., 188, it appears:

> "In September, 1905, the Typothetae finally refused to grant the eight-hour day, and thereupon the Typographical Union instructed the local unions in the different cities, of the United States (among them the City of Richmond) to declare a 'strike' where the eight-hour day was refused; and the appellants, members of Richmond Typothetae, the owners and operators of printing establishments in the City of Richmond, still refusing to grant the eight-hour day, Typographical Union No. 90, **the employees of appellants, on September 11, 1905, went out on a 'strike.'**"

In *Jones* v. *Maher*, 116 N. Y. Supp., 180, it appears that the employer in that case made certain discharges, including five foremen, and it further appears (page 182):

> "**Upon the discharge of the foremen, most of the people working under them left with them at noon, and when Schofield arrived, others, including the defendant Volkman, one of the foremen discharged that day, also left the factory. The discharged foremen and the employees**

who had stayed out or gone out, some 70 to 90 in all, thereupon held a meeting, and with the aid and counsel of Schofield organized a strike."

Gray v. *Building Trades Council*, 91 Minn., 171, was a case of boycott involving a controversy between electrical contractors and engineers and various trades.

Though this case does not involve the questions presented in the case at bar, and therefore is not an authority, yet we find the statement that **a strike must involve a quitting of the service of the employer,** and in the case at bar there was no quitting of the service by the employees of the petitioner because there was no strike by them. As is disclosed by the record, **only two employees left because the Tri-City Central Trades Council had called a strike, and not because the employees either were dissatisfied or struck.**

In *re Ex parte Heffron*, 139 Mo., 639, the statement of the facts does not clearly demonstrate the relations of the parties in the case, but it is disclosed sufficiently from the decree that the case involved the acts of the employees.

In *Jones* v. *Van Winkle Gin & Machine Works*, 131 Ga., 336, it appears clearly from the statement of the case by Presiding Judge Evans that the action was against persons who were employees of the plaintiff, but who were on a strike. It is interesting to note that the opinion in this case is authority in support of the contention of petitioner, especially as applied to picketing and the manner thereof indicated in the opinion of the court in the case at bar.

Iron Moulders' Union v. *Allis-Chalmers Company*, *supra*, not being authority nor justification for the decision of the Circuit Court of Appeals, the law of Illinois as expressed in *Barnes* v. *Typographical Union*, *supra*, should have been followed, especially since the action in the case at bar was based upon two sections of the statute (Criminal Code) requiring construction and having been construed by the Supreme Court of Illinois.

This court has given expression to the proper practice to be followed by the Federal courts in *Burgess* v. *Seligman*, 107 U. S., 20, where the court said:

> "Since the ordinary administration of the law is carried on by the State courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate, **and the construction of state constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is.** But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision of the state tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have

> accrued. **But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt.** Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State courts."

This is peculiarly a case where the rule of law as laid down by the Supreme Court of Illinois should have been followed by the Circuit Court of Appeals. The petitioner invoked protection under two sections of the statutes of Illinois. The District Judge in deciding the case refers to the fact that the petitioner brought its bill upon the theory of a combination and conspiracy prohibited by the sections of the statutes of Illinois above quoted. The District Judge said:

> "This appeal is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now, such a combination is unlawful."

None of the cases cited by the Circuit Court of Appeals in support of its decision deals with a case or with facts similar to those existing in the case at bar.

III.

MODIFICATION OF DECREE ERRONEOUS.

The modification of the decree granting a final injunction is contrary to the established law and the decisions of the Supreme Court of Illinois, and under the facts and the evidence was erroneous and a serious injury to the petitioner and its business and property. We have quoted the finding of the District Judge as to methods used by the Trades Council in its interference with the employees of the petitioner; the methods practiced by the Trades Council in its picketing of the petitioner's property and plant; its "persuasion" by blows or bludgeon; and threats of violence against the employees, and destruction of the petitioner's plant; its "lawful" picketing by intimidation, assaults, violence, and thuggery.

The Circuit Court of Appeals in its opinion accepted the opinion of the District Judge in this regard.

The evidence in support of these findings appears in the record as follows:

A. WALCHER testified as follows:

As works manager threats had been carried to me by third persons from the pickets to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end. * * *

Other men besides the defendants were engaged in picket duty around the plant. These pickets would stand around in groups of eight or ten, two and three groups. Some of these I recognized as ma-

chinists, others as workmen that had worked around Granite City at various times, various outsiders. (Rec., 30.)

STEVEN HAFNER testified as follows:

* * * On April the 30th as I came to work to the plant I go down on Neideringhaus avenue along side of the Wabash station. I saw Churchill, Gerlich, and Cook on Neideringhaus avenue that day. They was out on the walk about ten feet away from the track from the station there and jumped in front of me. They didn't say nothing, only Tom Churchill say, "You can't go this way." And I said, "Yes, I can." And he jumped on me and beat me up; I didn't see the two fellows coming behind; Tom Churchill jumped in front of me and stopped me and I didn't see the other two men come at all, and all at once I got hit in the face and all over, and then I went over to the cars; I couldn't hardly stand and braced up in a car; the time I was going over to the cars one fellow his name is McKenny he was going to get after me again and I said I wouldn't go into the plant; I was going back home; I was going to brace up over in the cars. I went home; couldn't go into the shop any more. I was feeling awfully dizzy all day long; still dizzy yet sometime on account of them hitting me. * * *

Churchill, McKenny and Cook all hit me, they knocked me down. They hit me in the face; I don't know where they did hit me; couldn't see fast enough how they did come on me, then I went between the cars and braced up a little and then I went back home. (Rec., 33.)

FRANK HEDSTRUM testified as follows:

* * * On May 8th I saw them on Niedringhaus avenue by the Wabash depot. A bunch of about fifteen or twenty of them came in the direction of four or five of us calling us vulgar names and we went on past the depot on the left hand side of the

shop on Niedringhaus avenue. The men at the depot followed us and commenced assaulting us. One of them hit me on the hand with a rock. As a result I was in a dazed condition and had to have a doctor care for my hand. On May 18 Ire Crawford and myself were walking to work about five o'clock in the evening.

We were coming down the street when we were intercepted by some men at the corner of 21st and B streets, about 4½ blocks from the plant. There were about twenty-five men in the bunch. Some man whose name I do not know said, "Don't go in to work." And the next thing I remember I found myself getting up and nobody around, except some school children and Crawford. Crawford was getting up from the ground where he was knocked unconscious as well as myself, and this gang of twenty-five men were all gone. I was rendered unconscious by being struck over the head with some blunt instrument. The right side of my face was swollen from being hit with something on the jaw, it was all swollen and sore down to my collar bone. My head was swelled and sore also; there was a knot about the size of a pigeon egg on the side of my head.

On the morning of May 14 I saw Ted Ishman close to the Wabash depot, he said to me that we would continue going into work until we got our heads knocked off. (Rec., 34.)

Ira Crawford testified as follows:

I have been working for the American Steel Foundries about six or seven weeks, running a crane on the night shift. On the morning of May the 8th, as I was coming from work I saw a bunch of about twenty men near the Wabash depot. I recognized Ishman and Dangles in the crowd. The crowd followed us around the depot calling us vile names and the next thing I knew there was a fight come off. They hit us, struck me in the back with something and on the arm, and struck at me at different times.

On May 18 I left the house about a quarter to five o'clock with Hedstrum. The only man that I recognized in that crowd was Dangles. They jumped on to us and beat me up with a club of some kind; hit me on the head; hit me on the back with a brick and I don't know what else. I was knocked unconscious and my head cut open. I don't think I was unconscious long. When I came to I saw men running near C. Street towards town. As a result of this assault I couldn't work for two weeks and was treated by a doctor. My face was cut and my head cut and bruised. My left arm was so I couldn't use it and it still bothers me. (Rec., 35.)

W. C. QUINN testified as follows:

* * * When I finished my day's work on night of May the 13th I and eight others left the plant about eight minutes to six and walked out Neideringhaus avenue across the track and past the depot. We passed Ted Ishman and Galloway at the depot with four or five other fellows, and they said, "There they go," and at the same time Galloway drops his hand and we walked up the street. We walked up the street two or three hundred feet and a gang of men about sixty-five or seventy of them came around the corner from behind a brick pile. From the other side of the street was about a likewise number; at the head of the bunch on this side of the street was Hartbeck, and just as we got from about twenty feet from the street car track this fellow hit Kelly in the face and at the same time he says, "There, you scabbing s— of b—; don't let him get away from you;" and I tried to cut across the field and they Shillalahed me with bricks and likewise the rest of them. The bunch that was at the station came from behind. I was struck by these brick bats in too numerous places to mention. I was struck mainly on the back and on the side of the left temple, and on the right jaw, also on the arms. I was knocked unconscious for about fifteen or twenty minutes and when I regained consciousness all of these men had

disappeared. As a result of this I couldn't perform my duties for the next week and have had a continuous headache ever since. I was never troubled with headaches before.

On May the 6th I saw Ted Ishman on the corner of Eighteenth street and he told me if we continued to work down there we would get hurt. He said there wouldn't be any of us go in there the following Monday if they had to kill us all. I started sleeping in the plant on the night of the 14th and have slept there up until last Monday. I slept on a board the first couple of nights and then on a cot. I slept in the plant because I didn't like to battle my way through all the time. I was followed continually across the river and on this side of the river, too. On one occasion I was followed by a man whose name I do not know and I caught six different street cars trying to escape and finally I caught a taxicab and got away from him. On the following day I met this same fellow and two others on the corner of Fifteenth and Chestnut streets in St. Louis. This fellow came in front of me and two fellows behind me and just as he got to me he said, "This is the scabbing b—d," and struck at me, and the two fellows from behind rushed up at me and I had to defend myself and I knocked one man down and got the other fellow down, and the other fellow ran. (Rec., 36-37.)

Frank Melton testified as follows:

I went to work for the complainant on April the 13th, worked about ten days and was off then until the 7th of May when I again went to work. That day I went across Niedringhaus Avenue on the south side of the plant to Compton's Restaurant; while I was in there this fellow here (pointing out defendant Gerlich in the court room) come up to me. He was the leader of these fellows. Guess there were twenty of them in there while I was eating dinner and they surrounded me. He came up and commenced to bulldoze me, and said, "Say you,

don't you know there is a strike on here?" He told me if I didn't stay out of that shop they would beat my damned head off and I sat and eat awhile, and I told them I thought I would quit that night beings they were getting so strong with it, and they kept getting louder all the time and getting closer to me all the time. When I told him I would quit that night, he said, "You won't do it no such a damn thing; you have seen your last time in that shop. You are quitting right now." There was a heat to come down in a few minutes; they had me tied up and wouldn't let me in; I was pouring man. I told them I had a motorcycle in the shop and would have to get that out, so they gave me fifteen minutes to get out of there, and on account of their threatening attitude I was afraid to go back there to work. I went to work and worked one day after that and that night they jumped me in East St. Louis right near my home. I don't know who jumped me. One of them said, "There is that crane man at Granite City." One threw a brick but never hit me, and one ran over and knocked me down; don't know what it was, a hammer or something he had in his hand; hit me in the back and knocked me down; I was laid up for over a week; couldn't use my back, and struck me in the face and I was cut on the arm. This happened about the 14th of May. I don't know who struck me, it was done after dark and I couldn't very well recognize who it was.

I was satisfied with the terms of my employment and I am willing to work there, but I am afraid to work. (Rec., 38.)

WILLIAM FRANCIS testified as follows:

* * * When I left the plant on the night of April 29 I saw Tom Churchill about eight feet from the depot with ten or twelve other men among them was Wm. and C. Thornberg. They were all in the gang together. Churchill said, "If we didn't stay out in a decent manner they would make us stay out."

On the following morning I went to work with Steven Hafner. We met Thornburg and Churchill and they took Steve away from me and kicked him and beat him in the face with their fists and feet, they then ran away.

I saw the Blacksmith Freddy that morning. I saw him get whipped; knocked down. He come on the north side of the depot and Churchill, the two Thornbergs and three or four more fellows were on the south side. They headed him off around the car and they commenced whipping him and knock him down and beat him. There were about nine or ten of them in the assault. Freddy was unable to work and went home.

On the 13th of May there was trouble on Neideringhaus avenue about a half a block from the plant. There were nine men with me and I seen a world of men coming three directions. Some from behind the stamping works, south of the stamping works; some was coming north and when we passed by a gang at the depot we were in the middle of the three gangs. They commenced throwing bricks. I recognized two or three standing around there. Bricks was being thrown so fast I got behind a post. As I was going by the depot I recognized two or three of them. I recognized Churchill, Hartbeck and Galloway. Galloway was at the depot. A bunch of these men came in from behind us after we got past the depot. I saw workmen with me that were struck with bricks. A man got knocked down with a brick; one got hit in the ear with a brick. Mr. Quinn got knocked flat down unconscious. Mr. Patty over there got knocked down. It lasted about ten or fifteen minutes and then the gang run away in different directions. I got behind a post and didn't get a scratch.

Freddy was about eighty or ninety feet from the works when he was assaulted. Churchill and McKenny assaulted him. I don't know what Freddy said. I was about twenty feet from them. They did not molest me. Freddy didn't strike them.

Churchill and Hartbeck was in the fight on May the 13th. Don't know how many men were there; there was a world of them. I saw this fellow here throw a brick, I recognized him and the two fellows before the big crowd come up there, but the other gangs hadn't met us. And the crowd at the depot came up behind. (Rec., 39-40.)

J. E. Bell testified as follows:

I am working for the Steel Foundries as a crane man. I was working there on the 13th of May. On leaving our work eight or nine of the workmen went up Niedringhaus avenue together. A bunch of men came from behind the stamping works, one came back of us and one from the side; kind of corralled us, threw bricks and everything at us. I was struck in the back and arms with bricks. About the 8th or 9th of May I had a talk with McKenny. He told us if we didn't quit working they would cripple us so that we couldn't get there the next Monday morning. I have been satisfied with the terms of my employment there at the plant. (Rec., 41.)

Edwin Baker testified as follows:

I run the Royal Hotel in Granite City. I draw my trade mostly from the working people, and some of the employees of the complainant board with me. I know who the colored porter is that works for the complainant, he comes to my place for meals. On May 9 he came to my hotel with an order for two meals from officials at the complainant's plant. I packed them in two baskets and a bucket of coffee and handed them to him. He left my place and in about fifteen minutes came back as hard as he could run; ran in the restaurant and through kitchen where I happened to be. He did not have the baskets with him at that time.

About three minutes after the porter got there three men came into the place. I didn't know any of them: the spokesman said his name was Harris. He asked me if I was feeding men from the American

Steel Foundries. I told him that I was and they told me if I didn't quit feeding them they would ruin my business and see that I didn't get any more union men. (Rec., 42.)

O. P. FLOYD testified as follows:

I know the colored man, the porter at the plant. I sent him to this hotel to get those meals. I saw him coming back to the plant. As he was on the tracks coming to the plant he had the two breakfasts I sent him for in a couple of ordinary market baskets. At this point he was stopped by Churchill, Gerlich and two other men whose names I do not know. They forcibly jerked the baskets away from him and threw them on the tracks and kicked the contents of the baskets over the tracks and broke up the dishes and the negro went back the other way. He didn't come to the plant at all. (Rec., 42.)

VALLEY CRABTREE testified as follows:

I have worked for the complainant continuously since March 29th. On May 8th I left my work about 7:15 in the morning to go home; Hedstrum and Crawford, fellow employees, were with me. As we were going on Neidieringhaus avenue near the depot I met a bunch of about fifteen assaulters. I only knew Ishman and Warden in the bunch. They come up in front of us and called us vile names; whether they were addressed to me or not I don't know; never had anything said to me before. They followed us in around the depot and the next I knew Mr. Ishman and another fellow struck me with their fists. The fight started and lasted just a few seconds and the policemen came along and arrested us three employees, Mr. Ishman and another gentleman.

I had no other trouble. I am a furnace helper in the plant and satisfied with my employment there. (Rec., 43-44.)

THOS. CANTRELL testified as follows:

I am working for the complainant, starting there May the 13th. I left the plant that night about 6:10 o'clock, and when I got down about a half a square from the Wabash Depot it seemed to me there were about two hundred men surrounded us. I recognized one man, Ted Ishman. I saw him throw a brick and strike Mr. Stark with it. Stark was covered with blood; I took him across the street and met four other guys, but I can't identify them; they started hurling bricks at me; some hit me on the back and I made my get-away towards the plant. I stayed in the plant until about 8 o'clock and then four officers escorted us to the Royal Hotel. I went back to work and the next morning and for five or six days slept in the plant. I slept on tables until they got cots. (Rec., 44.)

ADOLPHUS HILEMAN testified as follows:

I started to work for the complainant along the first part of April and quit working April 25. On the evening of April the 24th I saw quite a crowd; Lamb and Ishman was with them. They asked me to stay out, that there was a strike on there; I told them I would go in and pour the heats and then come out, and a fellow said, "Go on in and scab then and we will catch you when you come out." On the evening of April 24 I was met by Ishman, Holmes and Paddey about six blocks from the plant. They said the machinists called a meeting and decided to get everybody that went in there and knock their blocks off and I had better stay out. Paddey said the machinists would do that; they didn't say they would do it. On April 25 I saw Horace Howard and Harry McKenny. I was on the inside of the fence talking to them through the fence. When I first saw them I was sitting on the water tank by the fence about forty feet from the gate. They told me I didn't do the right thing by staying in there and scabbing; I ought to come out. I quit working there that day because they made those threats and I didn't care

to be in the trouble if there was any trouble. I was satisfied with my employment, satisfied with the terms of it and had no trouble with the company at all. (Rec., 47.)

ARTHUR GORDON testified as follows:

I am working as a craneman for the complainant; started to work on May 6th. On the evening of May 13th as I left my work I saw some of the pickets at the Wabash Depot, and when I got a little closer they started to follow behind us, and some coming up the same side of the street to meet us, and some coming from behind the stamping works, I got knocked down to the ground and they started to kick me with their boots. I don't know what I was knocked down with; it was from behind. There was a pile of bricks there. I was kicked in the forehead; on my head; had my ribs black and blue and bandaged up for about two weeks. I went to the surgeon of the plant and he bandaged my ribs. I had a big lump on my forehead. I was pretty sore; couldn't hardly breathe at all and was affected for nearly three weeks. After I was assaulted I made for the street car and got on it; they threw a pile of rocks; they didn't hit me, but hit the street car. I don't know any of the names of the men in the bunch.

Before this I had been talked to by Ted Ishman; he stopped me and told me if I didn't quit going in there they would put me out of commission. I told them I was going to work anyhow, and he said there would be none of us in the plant on Monday. I slept in the plant at nights for about a week. The first two nights I slept on a plank; after that on a cot. (Rec., 48.)

OSCAR E. HALL testified as follows:

I am master mechanic at the plant of the complainant and have been since May the 1st, 1913. * * *

About the 24th or 25th of April I had a conversation with the defendant Lamb. He said to me, "We

don't like the way you have treated our boys down here and we just come down to raise a little hell." Just before he said this he was with a party of five or six men.

Question by the Court: If men were unmolested would you have any trouble filling all the places you want?

A. I think not.

Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none. * * * (Rec., 49-50.)

CHARLES FORTNER testified as follows:

I am now working in Alton, but on April 14 worked for the complainant, worked there from April the 6th until April the 25th. I know Holmes, Ishman and Lamb; on the evening of April 23, as I was going home, I met them about one hundred fifty feet from the plant. They asked me if I knew there was a strike on and I told them I did not; they told me there was and the best thing was to keep out of there and if I didn't they would make me. Later on I got word if I didn't cease work I would get my head beat off. I quit work on the 25th of April because I was afraid they would carry their threats into execution and beat my head off, and didn't want to get into trouble one way or the other. (Rec., 52.)

FRED STARK testified as follows:

I applied for work at the complainant's plant about four o'clock in the afternoon of May the 13th and started to work on the 14th. As I was leaving the plant about six o'clock on the evening of the 13th I went straight over the tracks to the Wabash depot, turned there and went up that street and started toward the street car; got half way up between the depot and the street car and was surrounded by about two hundred men and somebody got behind me and hit me in the ear with a rock. It busted my ear. I feel the effects at the present

time and I believe it is broke. After I was hit I started down the street back of the plant. I didn't know anybody in the crowd only by having them pointed out to me. That red-headed man back there in the courtroom I saw there. I don't know his name. He tried to stop me down by the depot as I was coming back. I pulled out my pocket knife and he jumped aside. I left the plant that night between eight and nine o'clock and came back the next morning at four. The regular time to go to work was seven o'clock. After that night I slept in the plant on a pattern table. (Rec., 53.)

HARRY MCKENNY testified as follows:

I live in Granite City and am a steamfitter and belong to one of these unions. * * *

Yes, sir, I assaulted one of the fellows there. Churchill stopped him one morning and was talking to him and I come up and asked him where he was working and he said he was going in there to work; I told him to stay away, and he said, "You G—d d—n son of b——, I will work where I please," and I hit him. We were standing at the south end of the depot; me, Churchill and some other fellow. I never tried to stop anybody from going into the plant by force. I never assaulted nobody. I talked to them; tried to talk to them in a good way. (Rec., 64.)

Where a conspiracy and a combination is entered upon to do an unlawful act, the presumption is that the methods employed for its accomplishment will be correspondingly unlawful. Where, as in the case at bar, the methods for the accomplishment of unlawful combination and conspiracy are such as are proved beyond dispute, and are also judicially determined both by the District Court and by the Circuit Court of Appeals, it is a fair presumption

that similar unlawful methods, unless restrained and enjoined, will be continued. A decree permanently enjoining such lawlessness and the further execution of such unlawful combination and conspiracy should not indulge in particularity of language, or finesse of distinction, but is properly general and comprehensive in expression. Such was the decree as entered by the District Court in this case. The modification directed by the Circuit Court of Appeals is an invitation to the respondents to renew and continue their unlawful conspiracy and combination through lawless methods, and when called into question in proper proceedings for contempt, to seek exemption from punishment by casting doubt upon a proper interpretation of the terms "lawful" and "picketing." The District Court dealt with the facts as they were and the evidence showed that the "persuasion" indulged in and contended for by the respondents was unlawful and the methods adopted by them in the conduct of their pickets, flagrant, vicious lawlessness. The District Court in dealing with that conduct properly enjoined the respondents from "persuasion" and from "picketing," and the modification by the Circuit Court of Appeals requiring the qualification of the decree by eliminating the term "persuasion" and by qualifying the term "picketing" so as to have it read "unlawful picketing" was improper, and should be reversed by this Honorable Court, and in support of this, we submit the following authorities:

In *Atchison, Topeka & Santa Fe* v. *Gee*, 139 Fed. 582, the court says, at page 584:

"But as to one phase of the case there is no denial, but practically a confession, with the alleged and boasted right to practice it. A system of 'pickets', for more than a year, around and near by places to the shops of the company, has been kept up by all the accused and others. The pretense of this picketing is the right to converse with the new employees and persuade them to quit, and the further pretense that they desire to see who are at work. This picketing is done by details of pickets, assigned by others, they taking turn. At all hours when men are going to and from work, morning, noon and evening, the workmen must go through and by pickets, sometimes two, four, six and more, at a place. At times the paths and walks are obstructed. At times the pickets are near by, making grimaces, and at times acting as if violence were intended, and at times uttering profanity and vulgarity. **There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity or peaceful mobbing, or lawful lynching. When men want to converse or persuade, they do not organize a picket line. When they only want to see who are at work, they go and see, and then leave, and disturb no one physically or mentally. But such picketing as is displayed in the case at bar by the evidence does, and is intended to, annoy and intimidate. The argument seems to be that anything short of physical violence is lawful.** One man can be intimidated only when knocked down. But the peaceful, law-abiding man can be and is intimidated by gesticulations, by menaces, by being called harsh names, and by being followed, or compelled to pass by men known to be unfriendly. Perhaps such a man may not be a bully, but is frail in size and strength, or he may be a timid man; but such a man is just as

much entitled to go and come in quiet, without even mental disturbance, as has the man afraid of no one and able with or without weapons to cope with all comers. The frail man, or the man who shuns disturbances, or the timid man, must be protected, and the company has the right to employ such."

In *Beck* v. *Railway Teamster's Protective Union*, 77 N. W., 13, the court says, at page 22:

"It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They are intended to intimidate and coerce. As applied to cases of this character, the lexicographers thus define the word 'picket': 'A body of men belonging to a trades union sent to watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress.' Cent. Dict.; Webst. Dict. The word originally had no such meaning. This definition is the result of what has been done under it, and the common application that has been made of it. This is the definition the defendants put upon it in the present case. Possibly the decree is specific enough to include picketing, but we deem it our duty to place it beyond controversy."

The court in *Gompers* v. *Bucks Stove & R. Co.*, 221 U. S., 418, said:

"But the very fact that it is lawful to form these bodies (labor unions), with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve **the sacrifice of rights protected by the constitution**; or by standing on such rights, and appealing to the

preventive powers of a court of equity. When such appeal is made, it is the duty of the government to protect the one against the many, as well as the many against the one."

In *Jones et al.* v. *E. Van Winkle Gin and Machine Works,* 131 Ga., 336 (62 S. E., 237), the court says:

"Other cases similar in principle might be added, but these are sufficient to illustrate our point, which is that when strikers patrol the streets and approaches of the premises where the strike is in progress, and their number is so great, or their conduct is such, as to intimidate and coerce the employes into quitting their employment, or others from seeking employment, they are guilty of unlawful acts, and will be enjoined from a continuance of them. Sometimes the number of strikers engaged on the patrol may be so great that those intended to be affected by the demonstration will be intimidated by the number of the strikers or their sympathizers without special overt acts. The courts have repeatedly held that the assembling of strikers around the establishment of the employer in such numbers as will serve as a menace to those employed, or the keeping of patrols in front of or about the premises of the employer, accompanied by violence or any manner of coercion to prevent others from entering into or remaining in his service, will be enjoined."

Also in *Sailors Union* v. *Hammond Lumber Co.,* 156 Fed., 450 (454), the court says:

"But it is said that the injunction goes further than the law permits, in that by its language it prohibits the appellants from doing that which they have the lawful right to do. By the order of the court the appellants are enjoined 'from in any wise interfering with the crews, foremen, cooks, stewards, seamen, or

> either of them, or any of the servants or employes of the said steam schooners or steamship or either or any of them, without due process of law; * * * from in any wise interfering with the business of the said steam schooners and said steamship except by due process of law, with the business of complainant or orator of and concerning the said steam schooners and the said steamship; * * * and from in any wise conspiring, colluding or confederating together for the purpose of preventing the said steam schooners and steamship from receiving and discharging freight and passengers.' It is said that under this injunction the appellants would be in contempt if they asked one of their relatives not to go as a passenger on one of the appellee's steamers, or if they made complaint of the violation of navigation laws of the appellee's vessels, or if they exercised their right to discriminate against the appellee by shipping cargo on other vessels than those of the appellee. The language of the injunction, however, is to be interpreted in the light of the allegations and prayer of the bill, and these may make an otherwise indefinite order sufficiently specific. (*Hamilton* v. *State*, 32 Md., 348.) It is the acts set forth in the bill that the appellants are enjoined from doing," and

Barnes v. *Typographical Union, supra,* stating the Illinois rule which should be followed in this case:

> "**It is next contended that if any injunction was authorized, the injunction granted was too broad in enjoining appellants from peaceful picketing of complainants' premises and from congregating about or near their places of business for the purpose of inducing or soliciting employees to leave the employment.** It is contended that a peaceful picket line around a shop is entirely lawful. **But this court has held otherwise in Franklin Union v. People, supra, where**

endorsement was given to the doctrine of Beck v. Railway Teamsters' Protective Union, 118 Mich., 407, by quoting therefrom, as follows: 'To picket complainants' premises in order to intercept their teamsters or persons going there to trade is unlawful. It, itself, is an act of intimidation and an unwarrantable interference with the right of free trade. The highways and public streets must be free to all for the purposes of trade, commerce and labor. The law protects the buyer, the seller, the merchant, the manufacturer and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done ten or ten hundred feet away.' The court also gave its approval to the decision in *Vegelahn* v. *Guntner,* 167 Mass., 92. In that case a patrol of two men in front of the plaintiff's factory, maintained as one of the means of carrying out the defendants' plan, was held to be an unlawful interference with the rights of the employer and the employed. The patroling or picketing of the premises was considered to have elements of intimidation, and the court decided that the motive of obtaining better wages for themselves on the part of the defendants did not justify maintaining a patrol in front of the complainant's premises as a means of carrying out their conspiracy. The very fact of establishing a picket line is evidence of an intention to annoy, embarrass and intimidate, whether physical violence is resorted to or not. There have been a few cases where it was held that picketing, by a labor union, of a place of business is not necessarily unlawful if the pickets are peaceful and well behaved, but if the watching and besetting of the workmen is carried to such a length as to constitute an annoyance to them or their employer it becomes unlawful. But manifestly that is not a safe rule and furnishes no fixed or certain standard of

what is lawful or unlawful. Any picket line must result in annoyance, both to the employer and the workmen, no matter what is said or done, and to say that the court is to determine by the degree of annoyance, whether it shall be stopped or not would furnish no guide, but leave the question to the individual notions or bias of the particular Judge. **To picket the complainants' premises was in itself an act of intimidation and an unwarrantable interference with their rights. Pickets were, in fact, guilty of actual intimidation and threats, but if they had not been, the complainants were entitled to be protected from the annoyance.**

"Another supposed right of the defendants asserted by counsel is the exercise of the power of persuasion, and it must be conceded that argument and persuasion are lawful if not directed to the accomplishment of an illegal and unlawful purpose. The object of the defendants as set forth in the bill was illegal, and if there is a malevolent intent to produce an illegal result, and it is produced, it makes no difference whether it is accomplished by mere persuasion or by physical violence. (Curren v. Galen, 152 N. Y., 33.)"

There is appended a copy of the final decree of the District Court, marked "Appendix C."

IV.

THE TRI-CITY CENTRAL TRADES COUNCIL A STRANGER—MEDDLER.

Your petitioner contended in the Circuit Court of Appeals that the respondent, the Tri-City Central Trades Council, was a stranger to the petitioner, was a meddler in the affairs between the petitioner and its employees, and therefore it was immaterial whether the picketing was lawful or unlawful,

whether the picketing was peaceful or unpeaceful, whether the right of approach and "conversation" was with an olive branch or bludgeon.

The Trades Council was an interloper. It was a trespasser. It and its pickets had no right either upon or around the premises of the petitioner. It was indulging in a gratuitous interference between the petitioner and its employees, and was undertaking, contrary to the Statutes of the State of Illinois and contrary to the rights of the petitioner, to interfere with and injure the business and the property of the petitioner.

The Circuit Court of Appeals in disposing of that contention did not dispute petitioner's position, but stated in answer thereto that "many of the plaintiff's (petitioner's) employees at the time of the strike were members of the defendant's organization, the Tri-City Central Trades Council." (Page 9, Opinion.) This statement we have above shown, is unsupported by the evidence and is unjustified.

As stated by us at the outset in this petition, this precise question has never been, so far as we have been able to discover, submitted to this court for decision, and in our search of the reports of this court we have been unable to find any decision of that question. This question is very important. It has arisen in different circuits and jurisdictions. It is important to have this court decide whether either a trades union or an organization representing a number of local unions, or an organization representing the organizations or councils of different states, and each in turn having no direct relation to an employer, can

interfere between an employer and his employees, force and intimidate a cessation of the business operations of the employer, intimidate, beat and slug the employees who refuse to recognize a gratuitous exercise of authority, and if necessary to destroy the employer's property to attain their unwarranted ends. These ends, as in most cases of this kind, usually have a relation to a purpose re mote from the particular cause of strife and struggle and usually are intended to influence some other employer, some other business and some other situation. A particular interest being singled out which is thought most vulnerable at the moment to carry out and accomplish such an unwarranted purpose.

Let us call attention to some decisions dealing with this proposition.

The case of *Old Dominion Steamship Company* v. *McKenna*, 30 Fed. Rep., 48, was an action at law to recover damages from the Longshoremen's Union, which interfered with the business of the steamship company. The court said (page 49):

> "I have carefully considered the elaborate arguments of counsel, and examined the numerous authorities referred to. For lack of time, I can only state my conclusions:
>
> "1. All the material averments are either stated positively, or the source of information is sufficiently indicated.
>
> "2. The facts stated in the complaint and affidavit constitute a legal cause of action against all the defendants, for the actual damages suffered, for the following reasons:
>
> "(a) The plaintiff was engaged in the legal calling of a common carrier, owning vessels, lighters, and other craft used in its business, in

the employment of which numerous workmen were necessary, who, as the complaint avers, were employed 'upon terms as to wages which were just and satisfactory.'

"(b) **The defendants, not being in plaintiff's employ, and without any legal justification, so far as appears—a mere dispute about wages, the merits of which are not stated, not being any legal justification—procured plaintiff's workmen in this city and in southern ports to quit work in a body, for the purpose of inflicting injury and damage upon the plaintiff until it should accede to the defendants' demands, and pay southern negroes the same wages as New York longshoremen, which the plaintiff was under no obligation to grant; and such procurement of workmen to quit work being designed to inflict injury on the plaintiff, and not being justified, constituted in law a malicious and illegal interference with the plaintiff's business, which is actionable.**"

United States v. *Haggerty*, 116 Fed. Rep., 510 (C. C. W. Va., 1902):

The Guaranty Trust Company of New York filed its bill against Haggerty and others, including Mary, alias Mother, Jones, some of whom are citizens and residents of the State of Pennsylvania, Illinois, Ohio and West Virginia, asking that the defendants be restrained

"from entering and trespassing upon the lands and property of the Clarksburg Fuel Company; and to restrain them from going on or about the said company's tipples, tracks, or other property, together or individually, so long as they are not in the employment of the said company for the purpose of unlawfully preventing said company's employees in engaging and remaining in its employment; that the defendants, and

each of them, be enjoined and restrained from assembling, congregating, or camping at or near the plants, mines, and places of business of the said company's property, or at or near the residences of the said employees, and the paths and roads traveled by the said employees in going to and returning from their work, for the purpose of preventing the employees of the Clarksburg Fuel Company from entering into or continuing in said company's employment by intimidation, threats, or otherwise, whether by physical force or otherwise, and whether by actual threats or otherwise to the person, property, or families of the said employees; that they be restrained from unlawfully interfering with the management of the business of the company; that the defendants, their confederates and their associates, be, each and all of them, enjoined from assembling together in camp or otherwise, near the mines of the company, or near the residences of its employees, whereby they would be disturbed, alarmed, or intimidated from working in the mines, and preventing them from passing to and from their houses to the mines, or from doing any personal injury to the person of the employees of the said company or others who are desirous of entering into or remaining in its employment, or interfering in any unlawful way with any person who desires to go into and remain in said company's employment, and from visiting the houses and places of abode of the persons who are in the employ of the company, who are desirous of remaining in the employment of the company, for the purpose of preventing them by threats, menaces, or actual injury to their person or their property, or to the members of their family."

The Clarksburg Fuel Company was the owner of a large number of mines and mining

plants, and also owned in fee simple several thousand acres of coal lands and leased almost as many acres more. It was engaged in mining coal and manufacturing coke and shipping the same to the open market in the United States. Its production was immense and its customers resided in all parts of the United States.

There was a general strike in the anthracite regions of the State of Pennsylvania, in which a large number of persons were involved—said to be more than 100,000. Those at the head of the organization known as the United Mine Workers of America announced their intention to cause or create a strike among the miners of the soft coal regions of the United States, more particularly in the State of West Virginia, where the Clarksburg Fuel Company produced its coal, **not because of any grievance against the Clarksburg Company, but for the purpose of aiding the strike prevailing in the State of Pennsylvania, and to prevent the shipment of coal to localities that had been theretofore supplied with coal from the anthracite regions in the State of Pennsylvania.**

For this purpose the various defendants, including Mother Jones, who were known as "organizers," "agitators," and "walking delegates," representing the United Mine Workers of America, came into West Virginia, for the purpose of agitating strikes among the employees working for various coal companies, particularly the Clarksburg Company. To that end the defendants Haggerty and Mother Jones addressed various meetings composed in part of coal miners, and thereby attempted to inflame and

excite the hatred and animosity of miners towards the proprietors of the Clarksburg Company as well as others, advised the miners to quit work, and in some instances the miners were actually assaulted by the strikers, and in another instance one of the mines belonging to the Clarksburg Company was attempted to be blown up.

All of the above had a bad effect on the employees of the Clarksburg Company, which tended to intimidate those working in the mines and prevent them from continuing in their work.

The bill charged a combination and conspiracy entered into by the defendants with others to bring about a strike; that as the result of the above agitation and acts of intimidation, some of the employees of the Clarksburg Company and others were induced to strike, although most of them preferred to work and remain in the employment of the Company if they could be protected.

A temporary restraining order was entered and served upon the defendants, and the question the court has to consider in the above case is whether or not the defendants violated the court's order, and if so determine what punishment should be imposed upon them for its violation.

> "**It is to be observed that a very large portion of the miners in the employ of the Clarksburg Fuel Company do not want, in the language of one of the agitators who is enjoined, 'to lay down their picks and shovels and quit work.'** I do not question the right of the employees of this company to quit work at any time they desire to do so, unless there is a contractual relation between them and the employer which should control their right to quit. At the

same time I do not recognize the right of an employer to coerce the employees to continue their work when they desire to quit. But can it be said that where a conspiracy exists to control the employees, as in this instance, either by threats, intimidation, or a resort to any other modes usually accompanying the action of strikers, that such action upon their part is not only illegal, but a malicious and illegal interference with the employer's business? The question is its best answer. **While I recognize the right for all laborers to combine for the purpose of protecting all their lawful rights, I do not recognize the right of laborers to conspire together to compel employees who are not dissatisfied with their work in the mines to lay down their picks and shovels and to quit their work, without a just or proper reason therefor, merely to gratify a professional set of 'agitators, organizers, and walking delegates,' who roam all over the country as agents for some combination, who are vampires that live and fatten on the honest labor of the coal miners of the country, and who are busybodies creating dissatisfaction amongst a class of people who are quiet, well-disposed, and who do not want to be disturbed by the unceasing agitation of this class of people.** In the case we have under consideration these defendants are known as professional agitators, organizers, and walking delegates. They have nothing in common with the people who are employed in the mines of the Clarksburg Fuel Company. The evidence in this case shows that their only object and purpose is to get the people who are in the employment of the Clarksburg Fuel Company to go out upon a strike, as it is termed, for the purpose of compelling the owners of the mines to advance an increase in their wages. It discloses that the miners in the Pinnickkinnick mines are making an average of $4 a day in excess of their legitimate expenses, many of whom have worked

in foreign countries for less than a half a dollar a day. The defendants in this case are not laborers in the mines, and have no connection with them whatever. Their mission here is to foment trouble, create dissatisfaction among the employees in coal mines, producing strikes, which tends greatly to damage and injure the business of the employers. In this case there is no dissatisfaction among the larger number of the miners. **Only a small part of them have quit the mines from fear of intimidation, threats, and violence, but those remaining in the mines say they will quit work unless they are protected against the threats of these agitators and organizers. The strong arm of the court of equity is invoked in this case, not to suppress the right of free speech, but to restrain and inhibit these defendants, whose only purpose is to bring about strikes, by trying to coerce people who are not dissatisfied with the terms of their employment, which results in inflicting injury and damage to their employers, as well as the employees.**

"It is apparent that, if these agitators are permitted to interfere with the orderly, well-disposed miners who are anxious to work, and contented with the wages they receive, in the end this contented class of miners would, through fear, intimidation, as well as threats, be induced to throw down their shovels and picks, and cease to work in the mines, whereby the Clarksburg Fuel Company would be greatly damaged. Not only would it be greatly damaged, but it would be prevented from fulfilling its contracts for the future delivery of the product of its mines. The right of a citizen to labor for wages that he is satisfied with is a right protected by law, and is entitled to the same protection as free speech, and should be better protected than the abuse of free speech, in which the organizers and agitators indulge in trying to produce strikes."

Casey v. Cincinnati Typographical Union No. 3, 45 Fed. Rep., 135 (C. C. Ohio, 1891):

Casey was the proprietor and publisher of the Commonwealth, a daily and weekly newspaper published at Covington, Kentucky. He filed his bill to restrain the defendant, which is a corporation organized as a trades union or labor organization, composed of type-setters and printers, and certain individual defendants are the officers and managing agents of said Typographical Union from boycotting the complainant and his newspaper.

The defendant, Typographical Union, demanded that complainant unionize his office, that is to say, publish and conduct his paper according to the dictates of the Typographical Union, not only as to method of publication, but wages to be paid his employees, and employ only such persons that met the approval of the Typographical Union, and discharge certain persons then in complainant's employ.

The complainant refused to comply with said demands, whereupon the defendants all conspired to and did put into execution a very successful boycott of complainant's paper, the various details of which were elaborately set forth in complainant's bill of complaint. The demands of the defendant, Typographical Union, which, if complied with, would have necessitated the discharge of every printer employed by the complainant and the substitution therefor of persons wholly within the control of the Typographical Union. **There was no trouble between the complainant and his employees. Each were satisfied with the relationships existing between them. There**

had been no complaint upon the part of the complainant's employees. The complaint came solely from other persons not having any financial interest in the affairs of the papers, none of whose members had any right to expect employment by the complainant.

The court's opinion is rendered upon a motion for a temporary injunction and is one that is cited favorably in many subsequent authorities. The portion of the court's opinion, however, to which we invite this court's attention is found at page 146 of the report and consists principally of the approval of an opinion of Judge Carpenter of the Supreme Court of Connecticut in the case of *State* v. *Glidden*, as reported in 8 Atl. Rep., 890.

Judge Sage said:

> "In *State* v. *Glidden*, cited hereinbefore, Judge Carpenter, speaking for the Supreme Court of Connecticut, states that the defendants said in effect to the publishing company:
>
> " 'You shall discharge men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true, we have no interest in your business; we have no capital invested therein; we are in nowise responsible for its losses or failure; we are not directly benefited by its success; and we do not participate in its profits—yet we have a right to control its management, and compel you to submit to our dictation.'
>
> "The court said that the bare assertion of such a right was startling; that, if it existed, all business enterprises were alike subject to the dictation and control of those who asserted it, and upon the same principle and for the same reason the right to determine what business men shall engage in, and when and where

> and how it shall be carried on, will be demanded, and must be conceded to associations of workingmen of the class of those whom it would be necessary to employ. The opinion in this case, although the case itself arose upon an indictment for conspiracy, is a well-considered discussion of the law with relation to boycotting. See, also, *Steam-ship Co.* v. *McKenna*, 30 Fed. Rep., 48."

State v. *Glidden et al.*, 8 Atl. Rep., 890 (Conn., 1887).

The defendants had been found guilty of a criminal conspiracy, the object of which was (1) to compel the Carrington Publishing Company, against its will, to discharge its workmen, and to employ such persons as the defendants and their associates should name; and (2) to injure and oppress the workmen then in the employ of said corporation, by depriving them of their said employment by first demanding the discharge of said employees, and upon such demand being refused, boycotting the Publishing Company.

Judge Carpenter, speaking for the Supreme Court of Connecticut, expressed the views of the court, as follows:

> "Now, if we look at this transaction as it appears on the face of this information, we shall be satisfied that the defendants' purpose was to deprive the Carrington Publishing Company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendant. The motion was a selfish one,—to gain an advantage unjustly, and at the expense of others,—and therefore the act was legally corrupt. As a means of accomplishing the purpose, the parties intended to harm the Carrington Publishing Company, and therefore

it was malicious. * * * The defendants and their associates said to the Carrington Publishing Company: 'You shall discharge the men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true, we have no interest in your business, we have no capital invested therein, we are in nowise responsible for its losses or failures, we are not directly benefited by its success, and we do not participate in its profits; yet we have a right to control its management, and compel you to submit to our dictation.' The bare assertion of such a thing is startling. The two alleged rights cannot possibly co-exist. One or the other must yield. If the defendants have the right which they claim, then all business enterprises are alike subject to their dictation. No one is safe in engaging in business, for no one knows whether his business affairs are to be directed by intelligence or ignorance,—whether law and justice will protect the business, or brute force, regardless of law, will control it; for it must be remembered that the exercise of the power, if conceded, will by no means be confined to the matter of employing help. Upon the same principle, and for the same reasons, the right to determine what business others shall engage in, when and where it shall be carried on, etc., will be demanded, and must be conceded. The principle, if it once obtains a foothold, is aggressive, and is not easily checked. It thrives on what it feeds, and is insatiate in its demands. More requires more. If a large body of irresponsible men demand and receive power outside of law, over and above law, it is not to be expected that they will be satisfied with a moderate and reasonable use of it."

Jersey City Printing Co. v. *Cassidy*, 53 Atl. Rep., 230 (N. J., 1902):

The Jersey City Printing Company filed its bill asking for an injunction against Cassidy and others.

Vice-Chancellor Stevenson in his oral opinion concedes that an employer has a right to arbitrarily "dictate" to his employees in regard to matters in respect of which their conduct ought, according to correct social and ethical principles, to be left entirely free. Likewise employees with certain limitations may dictate how their employer shall conduct his business, so long as the dictation of either is backed up only by a threat of an association of the relations of employer and employee, hence, he holds that employees may inform their employer that unless he does certain things to their liking they will "strike."

At page 232 of the report the court says:

> "But the difficult case presents itself when the workmen in combination undertake to interfere with the freedom of action on the part of other workmen who naturally would seek employment where they, the workmen in combination, desire and intend that no man shall be employed excepting upon their terms. The difficulty is in perceiving how molestation and annoyance, not of the employees of a complainant, but of persons who are merely looking for work, and may become employees of the complainant, can be erected into a legal or equitable grievance on the part of the complainant. But the difficulty is still further increased where the possible employees make no complaint to any court for protection, and the conduct of the molesting party does not afford a basis which the

ancient common law recognized as sufficient to support an action of tort on their behalf, such as for an assault and battery, or a slander. Abusive language is not necessarily actionable at common law. If to call a man a 'scab' in the street, or to follow him back and forth from his home to his place of employment, was formerly not actionable on behalf of the victim of this petty annoyance, the problem is to understand how one who is merely the victim's possible employer can complain either at law or in equity; there being no actual contract for service, but only a potential one, interfered with."

Again at 234 of the report the court says:

"I think it is safe to say that, all through this development of strike law during the last decade, no principle becomes established which does not operate equally upon both employer and employee. The rights of both classes are absolutely equal in respect of all these 'probable expectancies.' An operator upon printing machines has the right to offer his labor freely to any of the printing shops in Jersey City. These shops may all combine to refuse to employ him on account of his race, or membership in a labor union, or for any other reason, or for no reason, precisely as twenty employees in one printing shop may combine, and arbitrarily refuse to be further employed unless the business is conducted in accordance with their views. But, in the case of the operative seeking employment, he has a right to have the action of the masters of the printing shops in reference to employing him left absolutely free. **If, after obtaining or seeking to obtain employment in a shop, the master of that shop should be subjected to annoyances and molestation instigated by the proprietors of other printing shops, who combine to compel, by such molestation and annoyance, this one master printer,**

> **against his will and wish, to exclude the operative from employment, this operative, in my judgment, would have a right to an action at law for damages, and would have a right to an injunction if his case presented the other ordinary conditions upon which injunctions issue."**

Frank v. *Herold*, 63 N. J. Eq., 443; 52 Alt., 152, 1901:

A bill was filed against upwards of eighty defendants, asking an injunction to protect the complainants from an alleged conspiracy among the defendants to prevent certain operatives of the complainants from continuing to work for them.

From the statement of facts and opinion of the court the facts do not clearly appear. There is no doubt, however, that the complainant was the owner of what is known as the "Greater Barnert Mill," in Paterson, New Jersey, and the defendants were endeavoring to persuade various women employees from continuing in the employ of complainant.

The Court says:

> **The right of a master to have a servant continue in his employ without molestation or enticement by any third party is a property right, so recognized by the law, and well within the rule laid down by Vice-Chancellor Green in Barr v. Essex Trades Council,** where he shows that the right of a man to carry on his business is a property right.

Conclusion.

Up to and on April 24, 1914, the petitioner operated its plant in peace. Between the petitioner and its employees there was amity and accord. The employees of the petitioner had made no complaint of either wages or conditions; they were satisfied and contented. The respondent, the Tri-City Central Trades Council, claiming to represent certain trades and crafts, but not any of the employees of petitioner, on April 20, 1914, through a committee headed by its president, Earl Galloway, demanded from the manager of the petitioner a change in the wage condition of the employees. The petitioner's manager inquired of the president of the Trades Council if he or any of the committee were or were representing any of the employees of petitioner, to which the president of the Trades Council answered that they were not, whereupon petitioner's manager declined to deal with the Trades Council, and stated that he was prepared and ready at all times to discuss any matters with the petitioner's employees. (Rec., p. 32.) Thereupon the respondent, Trades Council, entered into a conspiracy to compel the petitioner, without the request or complaint of any of its employees, to establish the scale of wages which obtained in November, 1913, and in order to accomplish its purpose, by posting and distributing circulars and otherwise sought to have employees of the petitioner abandon their work and interrupt the petitioner's business and close down petitioner's plant. Only two of the three hundred and seventy-five employees of the petitioner complied with the efforts

of the Trades Council in this regard. Thereupon, in furtherance of the conspiracy, the Trades Council, not acting for the employees of the petitioner nor at their request, and being an entire stranger to the situation, undertook to force and compel the employees of the petitioner to stop work and close down petitioner's plant by placing pickets upon and around the premises and plant of the petitioner. In consequence and in pursuance of this illegal conspiracy of the Trades Council, its pickets so placed there persisted and continued to annoy, harass, intimidate, beat and in many instances slug into a state of insensibility a very large number of the employees of the petitioner. Still being unsuccessful in its illegal conspiracy, the Trades Council threatened that unless the petitioner would comply with its demands it would destroy petitioner's plant and property.

The right of an organization such as the Trades Council, an entire stranger, not representing nor acting for either employer or employee, to undertake to force the employer to pay a different scale of wages than that agreed to and satisfactory to both the employer and employee, and for the accomplishment of such illegal purpose conspire to interfere with the business and property of the employer and by intimidation and assault to compel and force the employees to leave their places, abandon their work, violate their contract obligations with the employer, interrupt the employer's business, close down its plant, and, if necessary, destroy it, is a proposition to which the Circuit Court of Appeals by its decision in this case has given assent, but which this

court has not yet, so far as we have been able to discover, considered or decided.

If what was done in the case at bar is legal, then any council or organization that represents machinists or barbers, foundrymen or bar tenders, in New York or California, in Texas or in Minnesota, or in any other state, can take upon themselves the right to interfere with distant property and business, upon the pretext, uninduced by any complaint of the employees, that the wages are too low or the working conditions unsatisfactory. Property and business are indeed insecure if such a rule can obtain. Both the employer and the employee are in a position of helplessness and terrorism if such be the law. It is vital to the interests of property and of business, of capital and of labor as well, that this court, now that the question has been presented, should in no uncertain terms give expression to the law on the subject.

This presentation of the case is long, perhaps too long, but by liberal reference to the evidence in the record and liberal quotation from authorities cited, we sought and hoped to save this court both time and effort.

MAX PAM,
HARRY BOYD HURD,
WILLARD E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

STATE OF ILLINOIS, }
COUNTY OF } ss.

William E. Wheeler, being duly sworn, says that he is one of the Solicitors for American Steel Foundries, the petitioner; that he, together with the other counsel named, prepared the foregoing petition; that the allegations thereof are true, as he verily believes.

.....

Subscribed and sworn to before me, this ..... day of ....., A. D. 1917.

.....

Notary Public, ... County, Illinois.

APPENDIX "A."

Judge Humphrey's Opinion.

The law is very well settled, I think so well settled that there can be no dispute with the court or between counsel, as to the rights of the parties. It is not a new question; not so old in this country as in Europe, but still it is not a new question even in this country.

Men have a right to combine their capital and create artificial bodies for the carrying on a great works, works so great no one man could do it. That is a combination. The law recognizes it. It is legal. The progress of the world has been marked more among the nations which permit this combination than anywhere else in the world.

In order to carry on these great works, something besides capital is necessary. Something more important than capital; something more human than capital; something that touches the people more tenderly than capital. That is labor. So the law provides, wisely provides, that a man who has labor to sell may combine with his fellows for the purpose of helping his own condition, or getting more for the commodity which he brings to the public service than he would if he were not organized, and that brings us near to the point of conflict. The manufacturer, the corporation, has work to do. It offers a price, the price which in its judgment the market would justify. The man or men who have the labor to sell try to meet that price.

They cannot do it always. They say we will exercise the privilege, which the law gives us, to refuse to work for you. A and B join with C, D, E and F, and they have a right to do that and say they won't work for you individually, or in a body. Now that is a lawful right, but the very statement of that right contemplates that any other man, or any other body of men, organized or unorganized, has a right to sell his or their labor at the price offered if he wants to.

Now you see how absurd it would be to affirm one of these doctrines and disaffirm the other. The very basis of law on which the labor union exists contemplates that the man who does not belong to the labor union has the same right to exercise his own judgment as to the price at which he will sell his labor. When you consider all these things, the man's home necessities, the man's wants, the size of his family, his condition in life, whether or not he has a nest egg laid away, whether or not he has a bank account, is the controlling feature with him. One man moves from one motive and refuses; another man moves from another motive and says, "Yes, I will work at the price you offer; the wages are satisfactory and the conditions are satisfactory." Then we are up to the time when the law is called upon to decide whether the man or the group which refused to work shall say that the man who wants to work shall not work. You see what an absurdity it would be to affirm that doctrine.

This bill is brought upon a theory different from most of the bills in the books. This bill charges a

combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trades of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests, viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no

other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We would't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law, and there is no other view to take of it. This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it. When the company several months later undertook to run on a different scale of wages they contracted with certain men, who did not belong to the union, to work for them. These men have said upon the stand they were willing to work; the wages were satisfactory; the conditions were satisfactory, but that they didn't work because they were afraid of the defendants.

Now a man who doesn't want to work at a certain wage has a right to withdraw; another man who does want to work under those conditions and for those wages has an equal right to work without being interrupted, and the first man shall not interfere with the second.

Work is the condition of us all. No man is of any account in this world without it; no matter what character the work may be. We are all workers or we are no good. Every man must judge for himself as to the contract of labor which is satisfactory to him. He may work, or he may decline to work, but he shall not interfere with his neighbor who desires to work, for the Government will protect such neighbor and a government that will not protect such a man isn't fit to live, and, in my judgment, will not permanently endure.

The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be violent or peaceful.

However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the conditions under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up

to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get to him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law, and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There could be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you.

Counsel for complainant may prepare an order finding the averments of the bill sustained and extending the injunction, making the restraining order an injunction against the union, its officers and all other persons who have had any part, as shown by the evidence, in the execution of the unlawful combination.

The injunction may go this much further; it may prohibit absolutely picketing for the purpose of executing this unlawful purpose. It may extend also to all persons who shall engage in helping or abetting the unlawful combination, whether the knowledge came to them before or after the issuing of this in-

junction. Let the injunction be printed and posted liberally in the vicinity of the works.

Perhaps I ought to say to you gentlemen who are the officers of the defendant union, that the court regards it as your duty to explain to those who are not here and to those who are here, if necessary, just what the purpose of this order is, and that it is their duty to obey it, for the court will find some means of enforcing its order.

APPENDIX "B."

Circuit Court of Appeals Opinion.

Before Mack, Alschuler and Evans, Circuit Judges.

Appellants, herein called defendants, appeal from the final decree entered in favor of appellee, herein called plaintiff, enjoining defendants as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents, and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with

it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

Plaintiff instituted this suit to prevent alleged threatened injury to its business and threatened destruction of its manufacturing plant, located at Granite City, Illinois, claimed to be worth $1,000,000, which it alleges the Tri-City Trades Council, a labor organization and other defendants, former em-

ployees of plaintiff or members of the Council were injuring and threatening to destroy. It alleges the Tri-City Trades Council attempted to force plaintiff to raise the wage paid its employees, and to accomplish its object called a strike of plaintiff's employees. In the course of the strike picketing was resorted to, and the defendants sought the support of non-striking and prospective employees. Plaintiff further claimed that its employees were assaulted by defendants and by those engaged in picketing the shops, and that prospective employees had been so intimidated by defendants that they refused to enter plaintiff's employment.

The gravamen of the plaintiff's bill is found in the following, therefrom:

> "Your orator further represents that the said defendants have combined and conspired to prevent your orator from employing skilled laborers at its plant, although such skilled laborers and your orator have agreed upon terms of employment that are mutually agreeable and satisfactory; that in carrying out such combination and conspiracy the defendants began picketing said plant of your orator on or about April the 23rd, 1914; that the said defendants on April 23rd and since that time have caused various numbers of men or pickets, to-wit: five to thirty men to be stationed adjacent to the main gate of your orator's said plant, which said pickets from that day until the present time have threatened to assault, mistreat and injure various of the employes of your orator unless said employes ceased from their work; that said defendants so combining did on April 29th, 1914, cause two of your orator's employes to be assaulted by said pickets," etc.

Defendants denied any and all acts of violence or assaults of any nature. On the other hand, they claimed that strike-breakers attempted to shoot the striking employees, and were urged so to do by representatives of plaintiff.

Defendants also denied the existence of any unlawful conspiracy among them, but did admit

> "that said Tri-City Central Trade Council did place certain ones on certain streets and avenues leading to said plant charged with doing picket duty, but such ones were stationed 100 yards from such mill and they were instructed to notify all persons who sought to enter the plant, that there was a strike on, because of such reduction in wages, and such pickets were instructed to use all honorable means to persuade such ones to not enter such plant, and not to take the places of the laboring men, who had gone on a strike on account of such reduction of wages."

The District Judge in rendering his opinion said:

> "This evidence clearly shows that this union, this Trades Council, by the testimony of its officers entered upon the work of preventing this complainant from getting men to run its factory, run its plant except upon the condition that it pay a certain scale, the November scale. That combination was illegal."

Speaking of picketing, he said:

> "However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position, and having these cases frequently before me, has taught me that there is no such thing as peaceful picketing."

Defendants attack the decree on three grounds:

(a) The evidence does not justify the issuance of any injunction.

(b) The restraining order is too broad and restrains defendants from doing lawful acts.

(c) The court is without jurisdiction, because the amount involved does not exceed $3,000.

Evans, Circuit Judge, delivered the opinion of the court.

Defendants' claim that the court was without jurisdiction is without merit. The necessary diversity of citizenship appears. The amount involved exceeds $3,000. It was not necessary that $3,000 worth of property should be destroyed before the Federal court acquired jurisdiction. The alleged threatened damage far exceeded the statutory sum necessary to give the district court jurisdiction.

Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which if carried out would have resulted in the destruction of property. The district judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.

But the court also enjoined the defendants:

> "from picketing or maintaining any picket or pickets on or about the streets leading to the premises of the plaintiff."

And the order continued:

> "It is further ordered * * * that the said defendants * * * be and are perpetually restrained and enjoined * * * from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid."

The obvious effect and purpose of this decree was, among other things, to prevent all picketing by the defendants or others similarly interested, and to prevent these parties from persuading their fellow employees to join them in their effort to secure what the strikers apparently considered the laborer's just demands.

In *Iron Molders' Union* 125, *Milwaukee*, v. *Allis-Chalmers Co.*, 166 Fed., 45, the rule is so well stated that we quote from it the following:

> "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished. In the guise of picketing, strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault. But from the evidence it can always be determined whether the efforts of the pickets

> are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgments. *Prohibitions of persuasion and picketing, as such, should not be included in the decree.*"

Labatt in his work on Master and Servant, Vol. 7, page 8364, says:

> "Attendance in the vicinity of the employer's place of business for the purpose of obtaining information as to those at work there, or of communicating the information that a strike is in progress, to those who may resort for employment, is uniformly regarded as lawful even where the right to maintain pickets for the purpose of persuasion is denied."

The same writer further says:

> "The preponderance of opinion is to the effect that attendance even in numbers, for the purpose of lawfully persuading others not to work, is permissible, so long as it is not carried on in such a manner as to intimidate persons at work, or seeking employment, or to subject them to undue annoyance, or to interfere with the free access to the employer's premises."

Further authorities in support of the rule laid down in the *Iron Molders Union* v. *Allis-Chalmers Co.* case, *supra*, are, *Gray* v. *Building Trades Council*, 91 Minn., 171; *Karges Furniture Co.* v. *A. W. Local Union*, 165 Ind., 421; *Everett* v. *Typo Union*, 105 Va., 188; *In re Heffron*, 179 Mo. App., 639; *Jones* v. *Maher*, 116 N. Y. Supp., 1126; *Jones* v. *Van Winkle Gin & Mach. Works*, 131 Ga., 336; *Pope Motor Car Co.* v. *Keegan*, 150 Fed., 148.

But it is contended that the decree in these respects was proper because

(a) The restraining order does not prohibit picketing *per se*, but restrains defendants from carrying out an unlawful conspiracy to destroy plaintiff's business; that in order to prevent the defendants from accomplishing the unlawful object of the conspiracy, it was necessary for the court to restrain the defendants from picketing the plaintiff's works, and prohibit them from arguing their cause with plaintiff's employees.

(b) Defendants were not plaintiff's employees, but were mere outsiders, intermeddlers who were not truly representing the employees, but were trouble makers, fomenting strife and trouble where labor conditions and wages were entirely satisfactory to the employees.

Plaintiff's contention that a court may restrain lawful acts of striking employees when committed to carry out the purpose of an unlawful conspiracy to destroy the employer's business is supported by many authorities. Among them are *Sailor's Union* v. *Hammond Lumber Co.*, 156 Fed., 450; *In re Debs*, 158 U. S., 564; *Barnes* v. *Typo Union*, 232 Ill., 424; *Karges* v. *Woodworkers Union, supra.*

If the record disclosed the existence of an unlawful conspiracy on the part of the defendants to injure or destroy plaintiff's property the court would be clearly justified in restraining lawful as well as unlawful acts committed in furtherance of such a conspiracy.

If the purpose of the undertaking complained of were purely and simply, or even primarily, interference with the plaintiff in the conduct of its business as alleged, no act however innocent in itself,

directed to that end can be said to have a lawful purpose for its doing. Indeed, it may well be said that any act directed to that end is not a lawful act. If, on the other hand the object of the undertaking is unlawful, then the acts calculated to effectuate the object do not necessarily become unlawful merely because they interfere with the plaintiff's conduct of its business.

The right to strike to secure higher wages and improved conditions of labor is too firmly established to necessitate further elucidation. From the record here we can reach no other conclusion than that the object of this strike was to secure for plaintiff's employees the November wage scale of the union. Nothing appears in the record to indicate that this was not in good faith, or to raise the suspicion that the strike was a mere cloak to cover a deliberate purpose to interfere with the plaintiff's conduct of its business, or to injure and destroy its business and property. The purpose being lawful, if unlawful means are used to effectuate it, such means cannot be made to reach back and taint the purpose itself with unlawfulness, and thus render unlawful all the acts in its furtherance.

In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed, as this court has held, to ascertain whom the late employer:

> "has persuaded or attempted to persuade to accept employment,"

and persuasion may be used to induce them to refuse or quit the employment. As stated further in the *Allis-Chalmers* case:

> "The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. * * * Molders, having struck, in order to make their strike effective, may persuade (but not coerce) other molders not to work for less wages or under worse conditions than those for which they struck, and not to work for their late employer at all, so that he may be forced to take them back into his foundry at their own terms."

Undoubtedly picketing and persuasion would interfere with plaintiff's conduct of its business, in that it would make it more difficult for it to retain old employees and to hire and keep new ones. Indeed, the very act of striking often seriously interferes with that "free and unrestrained control and operation of the employer's business" which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike.

The laborer may be strictly within his rights although he obstructs the "free and unrestrained control and operation of the employer's business." The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employees by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business, any interference with that labor is an interference

with the employer's business. But whether the interference with the business is lawful or unlawful depends upon the facts in each case.

The order in the instant case fails to recognize this difference between the *lawful* means of interfering with another's business as an incident to the party's own right and *unlawful* means adopted by the same party. Methods may be considered lawful even though the employer's business is interfered with, because such methods are incidental to the right of the employee, which right should be and is recognized as equal to the right of the employer.

Plaintiff's further contention that the defendants were not its employees at the time of the strike, and therefore had no right to picket or persuade by argument those about to enter plaintiff's employment is not well taken. It is true, a striker is not technically an employee. The relation of employer and employee is temporarily suspended during a strike. The situation has been described as

> "A relationship between employer and employee that is neither that of a general employer and employee, nor that of employer and employee seeking work from them as strangers."

Neither strike nor lockout fully terminates during the strike the relationship between the parties.

Among the defendants in this case there were some former employees. Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest. Under

these circumstances, it cannot be said that the labor organization was an intermeddler or that its course was contrary to the wishes of its members or the wishes of the plaintiff's employees.

Insofar as the decree restrains *all* picketing and *all* persuasion and all interference with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this court for the modification of the decree in the *Allis-Chalmers* case will afford sufficient and proper guidance for the modification of the decree herein.

The decree of the District Court is reversed, with direction to modify the same, and to enter a decree, in accordance with the views herein expressed.

APPENDIX C.

Final Decree.

This cause came on to be heard at this Term on the 9th day of June, A. D. 1914, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

That the restraining order heretofore issued on May 18th, 1914, and which on May 28, 1914, was continued in force as a temporary injunction, be and is hereby made permanent as to all of said defendants, with the exception of the defendant C. L. Burton, and as to the said C. L. Burton the said restraining order and temporary injunction be and is hereby vacated.

It is further ordered, adjudged and decreed by the court that the said defendants, the Tri-City Central Trades Council, its officers and agents and Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or

threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestions of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of said American Steel Foundries; and from protecting, aiding or assisting any person, or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries for the purpose of doing, or aiding or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them,

or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the said American Steel Foundries.

It is further ordered, adjudged and decreed that the complainant shall cause not less than one hundred printed copies of this final decree to be posted in conspicuous places about and in the vicinity of its said plant at Granite City, Illinois; that the affidavit of the agent of the complainant so posting said notices shall be filed in the Clerk's office stating when and where such notices were posted, and such affidavit shall be *prima facie* proof of the posting of such notices at such time and places as shall be therein stated.

It is further ordered, adjudged and decreed that this injunction shall be binding upon each and all of the above mentioned defendants and upon all other persons from and after the date of this decree.

It is further ordered, adjudged and decreed that the defendants pay the costs of the above entitled cause to be taxed by the Clerk.

Office Supreme Court, U. S.
FILED
MAR 28 1917

No. 974

IN THE

SUPREME COURT OF THE UNITED STATES

.....TERM, A. D. 1917.

AMERICAN STEEL FOUNDRIES,
Petitioner,
vs.
THE TRI-CITY CENTRAL TRADES COUNCIL, ET AL.,
Respondents,

BRIEF OF RESPONDENT ON PETITION FOR WRIT OF CERTIORARI.

FRANK C. SMITH,
Attorney for Respondents.

Press-Record Publishing Co.

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APR 9 19

No. 973 14

IN THE

Supreme Court of the United States.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL ET AL.,
Respondents.

PETITIONER'S REPLY TO BRIEF FOR RESPONDENTS.

MAX PAM,
HARRY B. HURD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

C. G. BURGOYNE PRINTING BUSINESS, 72-78 Spring St., New York.

IN THE

SUPREME COURT OF THE UNITED STATES

.....TERM, A. D. 1917.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, ET AL.,
Respondents,

RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE SUPREME COURT:

We do not believe this to be a case for review by the Supreme Court. As has been said "The Supreme Court may extend Certiorari to every case pending in the U. S. Circuit Court of Appeals * * * but this power will be sparingly exercised and is only properly invoked where questions of gravity and importance are involved."

In re Woods, Petitioner, 143 U. S. 202.
Lau Ow Bew vs. U. S., 144 U. S. 47 - 55.
Forsyth vs. Hammond, 166 U. S. 506 - 14.
Lau Ow Bew, Petitioner, 141 U. S. 583.
The New York, 175 U. S. 187.

STATEMENT.

The statement of Petitioner as it appears on page 8 is, in part, a correct statement of the facts. According to the evidence, Cook, one of the employees did not know there had been a reduction of wages at the plant until he received his first pay (Ab. 70). Churchill quit when the strike was called (Ab. 66). It was not to remonstrate with the American Steel Foundries people that Earl Galloway, the President of the Tri-City Central Trades Council, called at the Mill about the 20th day of April, 1914.

The men in the employ of the Mill, who were members of Unions having representation in the Tri-City Central Trades Council, had filed complaint with the Central Trades Council, because their wages had been reduced, and at their request a Committee was appointed to confer with the Managament (Ab. 54). Galloway, by virtue of being President, was made Chairman of the Committee and he was the only one the Company would admit to the Plant (Ab. 55). The Superintendent found fault because none of the Committee were employees that particular day. But Galloway informed him that some of the Committee had been and were members of the different locals (Ab. 55).

Mr. Walcher, the Superintendent, informed Galloway that he would not meet with any representative of organized labor (Ab. 55); that if anybody around that plant had a grievance to come as individuals (Ab. 55). Just how many employees were members of Unions represented in the Trades Council we do not know, but Walcher, the Superintendent, testified that probably 80 or 90 per cent (Ab. 51). "We positively did not propose to recognize any of these Labor Unions. I told him, Galloway, we had nothing to arbitrate (Ab. 52). We run an open shop; don't recognize organized labor, merely deal with our employees (Ab. 32). I refused to deal with Galloway because he was representing a labor organization" (Ab. 32). Just how many employees were out owing to the reduction of wages we can only approximate. The Superintendent testified that when running full force there were about 1600 men, but at the time of the strike, probably about 300 (Ab. 26). When the Granite City Commercial Club endeavored to bring about a settlement and a Committee from the Central Trades met with representatives of such Club, the City officials and representatives of said Mill (Ab. 55), Walcher, the Superintendent, said: "We have no arbitration offer to make to these laboring men" (Ab. 52). After Galloway reported the result of such interview to the Tri-City Central Trades Council a strike was ordered and while assaults may have been committed, as to whether such assaults were committed " by strikers" or "strike breakers" or "outside parties" there is a confliet in the evidence.

The reason Mayor Kirkpatrick, of Granite City, did not furnish police is because he did not think it necessary (Ab. 59)

and for like reason no deputy sheriffs were furnished by Sheriff Henry (Ab. 61). At the joint conference held at the instance of the Commercial Club, Galloway said to Davis, the President of the Mill Company: "One of your men tried to shoot one of our boys last night" (Ab. 56), and Mr. Davis replied: "The only trouble with that fellow was his aim was not good enough" (Ab. 56). The Mayor overheard this (Ab. 58). Hence, it may be possible that the Mill people were seeking to bring on a conflict between their strike-breakers and the pickets to give them an excuse to go into Court and ask for an injunction. No one connected with the Trades Council, nor did any of the defendants threaten the destruction of property. Walcher, the Superintendent, testified that he heard it, but as to who said it, or from whom he heard it, he had no recollection (Ab. 30). No other person made such charge.

That part of the statement which says that the Tri-City Central Trades Council was "a meddler" (P. 12) is erroneous.

Galloway, the President of the Tri-City Central Trades Council testified: "After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation" (Ab. 55).

Cavanagh, the Secretary of such Trades Council testified: "A communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to

have the wages restored. * * * Ten or eleven trades were represented at the meeting on the 19th. I was not at the meeting on the 20th when the committee reported" (Ab. 72).

Just how many employees of the Foundries were members of Locals represented in such Central Trades Council is not stated unless we take the testimony of Walcher, Superintendent of the plant, who said he thought about 80 or 90 per cent (Ab. 51). The ruling of the U. S. Circuit Court of Appeals in reversing the cause and directing the Court below to modify the decree, says: "In so far as the decree restrains all picketing and all persuasion and all interference with the Plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein" (Ab. 114).

The Complaint of the defendants in this case is based on the ground that the District Judge held it to be unlawful for wage earners to combine **without regard to lawless acts.** The learned Judge said: "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this Complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful" (Ab. 78). The defendants took exception to such holding and appealed. The District Judge held furthermore that "There is no such thing as peaceable picketing" (Ab. 80). To this holding also the defendants dissented. Upon both propositions the defendants were sustained by the U. S. Circuit Court of Appeals. Nor was the ruling of such Court of Appeals by a divided Court.

BRIEF AND ARGUMENT.

We shall take up the points in the order, as they appear, in Petitioner's Brief on Pages 5, 6 and 7.

I.

The contention of petitioner to the effect, "that upon the undisputed evidence in the record * * * the Circuit Court of Appeals erroneously reversed the decree of the District Court." is without merit, for the reason. The District Judge predicated his opinion upon what constituted "an **unlawful combination.**" "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purpose of that combination is to prevent this Complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful" (Ab. 78). As far as the combination itself is concerned there was no dispute, but the Tri-City Central Trades Council, and other defendants, contend that such a combination was not unlawful. The trial Judge in his opinion, on page 80, said: "There is no such thing as peaceful picketing." The contention of the Tri-City Central Trades Council is that there is such a thing as "peaceful picketing" and the evidence on this point is conclusive. On

page 81 the District Judge said: "The injunction may go this much further, it may prohibit absolutely picketing for the purpose of executing this unlawful purpose."

It was upon these two questions, as to what constitutes an **unlawful combination,** and the right to do **peaceable picketing,** that Complainant and the Defendant disagreed and the issue upon these two questions was squarely joined.

When the plant resumed operations they reduced the scale of wages from two to nine cents per hour. Because of this fact a controversy arose between employer and employees. The Tri-City Central Trades Council, while composed of representatives of 37 Labor Unions of Granite City, Madison and Venice, maintained it was not an unlawful combination. According to the testimony of **Galloway**, the President, its object was "to better the conditions of the working classes" (Ab. 54). "To settle all disputes between employer and employees in relation to wages, etc., by arbitration instead of strike. * * * We tried to carry out that section (Ab. 54). The Central Trades Council is not a secret organization. Its meetings are open, its minutes are printed and promulgated and sent to all affiliated bodies" (Ab. 55).

Cavanagh, the Secretary, testified that "The object of the Council is to bring the laboring class into closer affiliation and secure better working conditions and wages for the workingmen" (Ab. 72).

The major portion of the employes of the American Steel Foundries were members of the various Locals which comprise

the Central Trades Council. Just what number it does not appear, but Walcher, the Superintendent of the Mill, testified: "We only had called for in round numbers, three hundred men and laid off approximately thirteen hundred. Eighty or ninety percent of the employees were old men. I assume these men were members of the various organizations" (Ab. 51). Galloway, the President, testified: "After the Council received complaints about the reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation" (Ab. 55).

Cavanagh, the Secretary, testified that "At a regular meeting on April 15th of the Tri-City Central Trades Council, a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages restored. The meeting was called for Sunday, the 19th, and ten or eleven trades were represented (Ab. 72). We had complaints from the men who worked at the Foundry (Ab. 72). Our organization is not secret. Our meetings are not secret" (Ab. 72).

Why the District Judge should hold such a combination to be unlawful is beyond our comprehension.

"Conspiracy" has been defined to be a combination between two or more persons to do a criminal or an unlawful act,

or a lawful act, by criminal or unlawful means," Cyc. Vol. 8, P. 620.

In the case at bar Complainant failed to prove a "conspiracy." Nevertheless the District Judge held it to be a "conspiracy" for workingmen to combine and demand the restoration of a former scale of wages (Ab. 78).

While the District Judge did hold that it was unlawful for wage earners to combine to compel the employer to pay a certain scale of wages, the U. S. Circuit Court of Appeals, on appeal, said: "From the record here we can reach no other concluson than that the object of this strike was to secure for Plaintiff's employees the November wage scale of the Union. Nothing appears in the record to indicate that this was not in good faith" (Ab. 112). The Court held furthermore, "In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed" (Ab. 112).

II.

As to the charge of conspiracy or unlawful combination there was not one scintilla of evidence. Quite true it was alleged in the bill but there was no proof. When Galloway, the President of the Tri-City Central Trades Council, testified, Counsel for Petitioner on Cross Examination sought to have him admit as much, but all he said was, "Our purpose in sending the pickets down there was not exactly to enforce an increase of wages but to try to encourage working men to quit work so the American Steel Foundries would be compelled to raise the wages to the standard" Ab. 57). "The pickets were not authorized to commit any unlawful acts, that is not the way the Council carries on its business" (Ab. 57).

Cavanagh, Secretary of the Central Trades Council, testified: "The object of the Central Trades council is to bring the laboring classes into closer affiliation and secure better working conditions and wages for the workingmen. No one connected with the Council authorized any unlawful act" (Ab. 72). **Wade,** Treasurer of the Central Body, testified: "We didn't authorize any unlawful or wrongful act" (Ab. 73).

The U. S. Circuit Court of Appeals, Fourth Circuit, in a recent case said:

"A combination to organize employees in a certain business to secure higher wages by peaceable and lawful methods does not constitute a conspiracy."

Mitchell v. Hitchman Coal & Coke Co. 214 Fed. 685.
(Decided 1914.)
(Opinion District Judge, 202 Fed. 512, reversed.)

Nor was the "threats of an organizer to organize the employees of Complainant's mine or shut it down, sufficient to show a conspiracy."

214 Fed. 685.

Notwithstanding the District Court held otherwise, "Evidence on review held insufficient to establish a conspiracy on the part of the officers and representatives of Labor Unions to organize the employees of Complainant's mine by unlawful means" (Id).

In a very recent case it was held, "Laborers may combine, forming unions to protect their rights and they have a right to persuade Complainant's employees to leave its service * * * they may picket their employer's business."

Alaska S. S. Co. v. International Long Shoremen's Assn. of Puget Sound, 230 Fed 964. (Decided 1916.)

On page 969 appears an opinion which was written by Justice Holmes while sitting on the Supreme Bench of Mass. (167 Mass. 92).

"If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible returns, it must be true, when combined, they have the same liberty that combined capital has to * * * bestowal or refusal of these advantages which they otherwise lawfully control" (P. 969).

On Volume 8 of Cyc. on page 637 we find the following:

"In the earlier decisions, it was held that while persons may each singly refuse to work unless they receive an advance in wages, yet if they do so by preconcert, or association, they may be punished as for a conspiracy * * *.

The more recent English decisions, influenced doubtless by legislation on the subject, hold that workmen have a right while perfectly free of enjoyment to agree among themselves not to go in to any employment unless they can get a certain rate of wages. * * *

The doctrine of these later decisions is also recognized in America. Workmen may lawfully combine to obtain as much wages as they may after consideration agree to insist upon receiving for their work."

III.

Among other cases cited is Wabash R. R. vs. Hannihan, 121 Fed. 563.

In Nation Fire etc. v. Mason Builders Assn., 169 Fed. 259, the U. S. Circuit Court of Appeals, Second Circuit, wherein a charge of combination between Mason Builders Assn. and Bricklayers Union was alleged; on Page 265 the Court said: "The direct object or purpose of a combination furnishes the proving test of its legality. It is not every injury inflicted upon third persons in its operation that renders a combination unlawful." * * *

"An agreement providing that no member of the Bricklayers' Union should work for any contractor who did not comply with the rules. Held, although such an agreement operated to complainants' prejudice, it was not a conspiracy against which complainant had any remedy" (P. 261).

And, in the case at bar, even though an agreement had been made whereby the Mill Company was to, if possible, by lawful means make it impossible to operate the Mill unless such Mill Company agree to an increase of wages, or submit the matter to arbitration, it cannot be said that the wage earners had exceeded their rights.

An unlawful conspiracy is defined to be "A combination between two or more persons to do an unlawful or criminal act, or to do a lawful act by criminal or unlawful means."

Goldfield Con. Mines Co. vs. Miners' Union, 159 Fed. 500. On Page 519 the Court said: "When free from contract obligations workmen have a legal right, singly, collectively or as a Union to strike; and having this right they have the further right to use such lawful means to make the strike effective as are not in conflict with the rights of others."

In the case of Bettner v. West Va., etc. Coal Co., 214 Fed. 716 the U. S. Circuit Court of Appeals for the Fourth Circuit (1914) held: "Strikers may not be restrained from using persuasion and other peaceable methods."

In the case of L. W. & W. R. R. v. Switchmen's Union, 158 Fed. 541, where an injunction was sought to restrain Switchmen from violating a contract by striking, the Court said: "I am inclined to think that defendants had the right to select a Committee to request a conference * * * and they could, if they chose to do so, delegate an officer of the Switchmen's Union to represent them and to advocate an adjustment of differences" (P. 545). And that is just what the employees of the Mill Company did in this case, delegate such duty to the Tri-City Central Trades Council.

In the case of Kelly v. Robinson, 187 Fed. 415, the U. S. Circuit Court of Appeals for the Eighth Circuit decided: "Union or other laborers have the right to quit the service * * * and they may by peaceable means persuade others to quit the service" (P. 417).

The U. S. Circuit Court of Appeals, Seventh Circuit, in the case of Arthur v. Oakes et al, 63 Fed. 310-27, wherein a District Judge had issued an injunction restraining engineers, conductors and switchmen from in any manner interfering with the operation of the road" * * *. On appeal, Justice Harlan said: "The Court below should have eliminated from the writ of injunction the words: 'And from so quitting the service of said receiver with, or without, notice, as to cripple the property or prevent or hinder the operation of said railroad' (P. 319). "The exercise

of employees of their right to quit in consequence of a reduction of wages could not be made to depend upon consideration of hardships or inconvenience to others" (P. 319).

And, in the case at bar, the Mill Company may not complain because the operation of the Mill is interfered with, for the reason the Company had the alternative, to either restore the former scale of wages, or arbitrate. They declined the proffer. The act of the Tri-City Central Trades Council was therefore a lawful act and as the Court of Appeals has said on Page 89, "Nothing appears in the record to indicate that this was not in good faith, or to raise a suspicion that the strike was a mere cloak to cover a deliberate purpose to interfere with the Plaintiff's conduct of its business, or to injure and destroy its business and property."

In the Hitchman Coal Co. v. Mitchell, 202 Fed. 512, the District Judge held that "The United Mine Workers of America was an unlawful conspiracy to injure the business of mine operators." But on appeal to the U. S. Circuit Court of Appeals for the Fourth Circuit (214 Fed. 685) the Court said: "He who seeks equity must do equity." "In other words he must come into Court with clean hands. If the Courts of this Country should by injunction relief protect the mine owner in the enjoyment of his property rights and restrain the laboring people from organizing their forces, by deciding such organization unlawful, would not the employer be in position to dictate the terms, or wages, of employees." * * *

"It should be definitely understood that the laboring men

have the right to use peaceable and lawful methods to unite their forces in order to improve their condition as respects their ability to earn a decent living" (Page 715). "For reasons set forth the decree of the Court below is reversed • • • at Plaintiff's cost" (P. 716).

And why was such Miners' Union held to be an unlawful combination by such District Judge? Because the trial Judge held, "in pursuit of its unlawful purposes to secure control of the monoply of mine labor" (P. 556). And what was this unlawful purpose? Nothing whatever, except the Miners' Union sought to make it obligatory that the Union be recognized. And in the case at bar all the Central Trades Council demanded was the restoration of the former scale of wages, or arbitration (Ab. 55).

"Notwithstanding, the Code of West Virginia provides that no persons, or combination of persons, by force, threats, menaces, or intimidation of any kind shall prevent or attempt to prevent from working in or about any mine any person or persons who have a lawful right to work about the same and who desire to so work. It was held that the Trade Union known as the United Mine Workers of America organized to secure reasonable wages and better working conditions among the mine workers of the United States by concerted effort to compel by peaceable means the improvement of mining conditions is not an unlawful organization, or combination, either under the statute, or at common law."

Mitchell vs. Hitchmann, etc., 214 Fed. 685.

On Page 696 the Court of appeals said:

"The learned trial Judge insists that the common law under which labor organizations have been declared unlawful in England is still in force in West Virginia and that therefore the Miners' Union is unlawful. * * * While there are decisions at Common law by the Court of England in support of such theory, yet such rule has not prevailed in this country except in a few of the earlier decisions of our Courts. Even in England combinations of this character were only proceeded against, as a general rule, where they were criminal or prohibited by statutory law." Id.

"The growth of development of the common law occurred when property rights were recognized as paramount to personal rights. At that time there was little if any concert of action on the part of the laboring people owing to their helpless condition, due in main to their ignorance. Their domination by the land owner and the capitalist was absolute. * * * Under such circumstances they were as helpless almost as slaves, and, is it any wonder, that we have so many decisions at common law * * * as well as the enactment of statutory laws, by virtue of which it was almost a physical impossibility for those who earned their living by honest toil to accomplish, by organized effort, those things necessary to elevate them to a place where they could assert those rights so essential to their welfare. The industrial development of the world within the last half century has been such as to render it necessary for the Courts to take a broader and more comprehensive view than formerly of matters pertaining to the relation of capital and labor." (P. 698) Id.

"It is now recognized by all civilized countries that labor is the basis of all wealth, and without which it is utterly impossible to accomplish anything in the industrial world" (P. 699).

"In this instance the Plaintiff has adopted a policy by which only non-union men be employed. If plaintiff may for the purpose of protecting its interests adopt a policy by which only non-union men can secure employment * * * by what process of reasoning can it be held that the defendant may not adopt the same method in order to protect their interests." (P. 703.) Id.

"Surely we have not reached the point where capital with its strong arm may adopt a plan like this for protecting its interests, while on the other hand the laboring classes are to be denied the protection of the law where they are attempting to assert their rights." (P. 704.) Id.

We have not attempted to defend lawlessness, if there was any, but we have contended for the right to do peaceable picketing. On this point we are willing that all of the Defendant's testimony and all of Complainant's witnesses be disregarded **except the officials of Complainant Steel Foundries**:

Hall, the Master Mechanic, testified: I never saw any acts of violence, nor any of the assaults. I only saw them stop the men and try to induce them to quit work" (Ab. 50).

Walcher, the Superintendent, testified. "I saw none of the men assaulted. They were trying to prevail upon the men from entering the plant (Ab. 31). I got to the plant about 6:30 A. M., go in and out at noon and stayed there until the plant

closed down for the night; saw no assaults committed; I saw no disturbance" (Ab. 31).

Floyd, the Chief Employment Agent, who was stationed at the main gate, testified: "I am at this gate from 7 A. M. until 8, 9 or 10 P. M. I didn't see any of the particular attacks that are mentioned. All I saw was the pickets talking to the men and the men being stopped" (Ab. 43).

Hoffman, Assistant Foreman, testified: "I have seen pickets about the Wabash depot, 150 yards from the plant (Ab. 45). The nearest I saw the pickets was 100 feet from the plant (Ab. 45). I saw no assaults. All I saw them do was to talk to the men" (Ab. 45).

Because Alderman Burton passed by the Mill every morning and evening to and from his work at the Laclede plant in Madison he was made a defendant in this case. He absolved himself, however, at the hearing. He testified that he "was not a member of any labor union. Passed by every morning and evening. I saw no disturbance there whatever and I passed there every day for three weeks" (Ab. 71).

We submit that if these five men are to be believed then there was peaceable picketing. It is not often we admit that one side can establish a proposition by simply quoting the testimony of adverse witnesses but we have done so in this case.

We do not believe that the statement charging the defendants with an intention of burning, or destroying the Mill, should have been made, in any event not without some evidence to substantiate such charge.

Walcher, the Superintendent, did say that "I was told that the statement had been made that the plant was going to be burnt" (Ab. 32). But when he was asked who told him or from whom he heard it, he could not say. This was nothing more nor less than "hearsay evidence" and should not have been given any credence by the trial Court. And why Mr. Davis, the President of the Steel Foundries, should say what he did to the President of the Central Trades Council, at the Commercial Club conference, we fail to understand. After Galloway had stated, "I said to Mr. Davis, some of the men they had imported in there as strike-breakers had shot at some of our men" (Ab. 56), Mr. Davis replied, "the only trouble with the man who done the shooting was that he didn't shoot straight enough" (Ab. 56). While Mr. Davis was present in Court when this statement was made, he did not go on the stand to make denial. Still it is not a pleasant matter to refer to, for up to the present controversy those connected with the Central Trades Council had had a high regard for Mr. Davis, and had not the charge been made that those connected with the Trades Council and other defendants contemplated burning down the Mill (Steel Mill) it would not have been alluded to.

Why counsel for Petitioner would contend that a Federal Court should follow the holding of a State Court is beyond our comprehension. They had their choice of forums. Had the bill been filed in the City Court of Granite City a defense could have been made at nominal expense. Or they could have filed the bill in the Circuit Court of Madison County and defendants

would have to go 15 miles only, to Edwardsville, the County Seat. But they chose to file in the U. S. District Court at Springfield, thus necessitating that defendants go 100 miles. If the American Steel Foundries wished to invoke the Criminal Code of the State of Illinois (Petition P. 25), with reference to a conspiracy the State Courts were open. The "Barnes case" (232 Ill. 425), cited on page 26, tends to uphold the view that wage earners have not the right to combine to compel an employer to pay a certain scale of wages and would indicate that wage earners have not the right to do peaceable picketing. But such holding was by a divided Court and we submit that the dissenting opinion (P. 411), written by Justice Farmer, concurred in by Justice Scott, is more in accordance with justice and the spirit of the times. However, as the said U. S. Court of Appeals had already passed on the two questions involved in the Allis-Chalmers case, 166 Fed. 45, there was nothing for the Court to do but follow its own ruling.

IV.

Duplication of III.

V.

We cannot understand why the statement should be made that "The Circuit Court of Appeals erroneously based its decision upon the authority of Iron Molders' Union v. Allis-Chalmers Company, 166 Fed. Rep. 45.

If there is any one person who should fully comprehend the meaning of a decision it should be the Judge, or Judges, who

comprise such Court. And the allegation that such Court "misapprehended the purport and applicability of the opinion in that case" is tantamount to saying that the Court did not give the matter careful consideration. And yet not only were written briefs filed, but the case was twice orally argued. Furthermore a petition for a rehearing was filed. Hence the statement that the decision was "erroneously based" is without merit.

VI.

The allegation that "this case arose from a conspiracy of strangers to the petitioner and its employees to injure and interfere with its business" is erroneous.

Under heading IV, on page 54, we find that the Tri-City Central Trades Council is alluded to as "a meddler." And on page 55 referred to as "an interloper." That "it was indulging in a gratuitous interference between the petitioner and its employees. In view of the evidence addueed we fail to see why such a statement should be made. The Record shows that the Tri-City Central Trades Council is composed of 37 local organizations, each of which has a representation of six members. The purpose of which organization is to "settle all disputes between employer and employee in relation to wages, etc., by arbitration instead of strike" (Ab. 54). "If we cannot settle by arbitration then we strike" (Ab. 57).

Galloway, the President, testified: "As President of the Central Trades I first learned of a controversy between wage earners and the Foundries from the various delegates of the

various trades who were refused any wages at that plant and made complaint to the Central Body that their wages were reduced from two to nine cents on the hour" (Ab. 54).

"After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its cooperation" (Ab. 55).

Cavanagh, Secretary of the Central Trades, testified: "At the regular meeting on April 15th a communication was received from the Machinists Union requesting that a special meeting be called of all the trades working at the American Steel Foundries to arrange some plan to have the wages restored that were in force when the plant shut down and the meeting was called for Sunday, April 19th. Ten or eleven trades were represented" (Ab. 72).

The Superintendent of the Mill, Walcher, testified that "Eighty or ninety per cent of the employees were old men. I presume these men were members of the various organizations" (Ab. 51).

With this undisputed testimony appearing in the Record we are at a loss to understand why Counsel for Petitioner would say that the Tri-City Central Trades Council is "a meddler" or "an interloper," for it was only performing the function for which it was created.

In the case of Mitchell v. Hitchman Coal Co., 214 Fed. 685-93 (decided 1914, U. S. Court of Appeals, Fourth Circuit), a

coal mine had closed down in June and suspended operations 50 days, and resumed operation upon a new mine basis employing only non-union men. The claim was made in that case that the strikers were not employees and that the Miners' Union of America was a meddler. And while the District Court ruled against the Miners' Union, on appeal the the trial Court was reversed.

In addition to the statement of Walcher that approximately 80 or 90 per cent of the employees were represented in the Trades Council (Ab. 51), Cook testified that he quit because of the reduction of wages (Ab. 70). "I didn't know what wages I was going to get when the plant started up; found it out in three weeks" (Ab. 70).

Churchill, a member of the Machinists' Union, testified that he quit because of the reduction of wages (Ab. 65). Lamb testified that when the strike came on four or five of the members were working at the plant (Ab. 60).

To warrant this Court in granting Certiorari there should be a showing made of **importance and gravity.** Instead, however, of making such showing it would appear instead that the application is made for delay. To find Court decisions appertaining to this heading cited by Petitioner it is necessary that a search be made through such petition.

The first case cited is the Keegan case, 150 Fed. 148 (P. 32) and a distinction is sought to be made because in that case it appears the strikers were in the employ of the defendant while in the case at bar the strikers were represented by the Tri-City

Central Trades Council. Likewise in the Everett case, 150 Va. 188, and the same point is made in Jones v. Maher, 166 N. Y. Supp. 180, where the men struck because the foreman was discharged (P. 34).

The Gray case, 91 Minn. 171, is on page 34 referred to, alleging that it was a controversy between employee and employer. And again on page 34 the Heffron case, 139 Mo. 639, and the Jones case, 131 Ga. 356, are cited for like reason. But we fail to see that these cases form any basis why a writ of Certiorari should be granted.

On Page 35 Counsel makes the broad statement to the effect "Iron Molders' Union v. Allis Chalmers Company supra not being authority nor justification for the decision of the Circuit Court of Appeals, that the "Barnes decision" of the Illinois State Supreme Court "should have been followed." Strange indeed to expect that a United States Circuit Court of Appeals should disregard its own holding and follow a State Court decision. And this, too, when the State Court was divided on the proposition of law involved (Barnes case, 232 Ill. 425). Furthermore, the State Court, in a later case, Kemp v. Division No. 241, 255 Ill. 213, held that it was **not a conspiracy** because men formed a union and agreed not to work with non-union men. "That the purpose of organizing labor unions was to gain strength and that the officials of the labor unions were merely the agent of those affected" (P. 220).

The United States Supreme Court holding (107 U. S. 21), cited on page 35 has no reference to lawful or unlawful com-

bination of labor, nor of peaceable picketing. The Court in that case does say, "that ordinarily the United States Court will follow a State Court holding as to **real estate** and the construction of **State Constitutions** or **Statutes.**" But there is no question of real estate title involved; nor is the construction, which is to be placed upon a statute, or any particular section of the State Constitution, at issue. **Not once** has any reference been made to any State statute, or section of the State Constitution, until the filing of this petition (page 35). As we have heretofore said, "Had Petitioner desired the application of the State law to the issues involved, they should have filed their bill for injunction in the State Court. They chose, however, to submit to the Federal Court and should not now complain.

On Page 51 we find the Gee case, 139 Fed. 582, cited, wherein a trial judge held that there was no such thing as peaceable picketing. But why cite such case and seek thus to overrule the U. S. Court of Appeals. The District Judge so held in the case at bar and the U. S. Court of Appeals has held otherwise. We find on page 52 the Beck case, 77 N. W. 13, and that portion quoted wherein the Court said: "It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion." We do not, of course, know what the evidence showed in that case, but in the case at bar the evidence was conclusive that only peaceable picketing was authorized.

Why Counsel should cite the Gompers case, 221 U. S. 221, we cannot understand, for the reason the right to do peaceable picketing, or the right of wage earners to combine, and by law-

ful means to try and compel an employer to advance wages or submit the wage dispute to arbitration were not involved.

We hardly think the Court will consider the Jones case, 131 Ga. 336, cited on page 53, of sufficient moment to even give it much consideration.

The Sailors' Union case, 156 Fed. 450, cited on page 53, is not in point, and if it was it is only the opinion of a trial Judge. Whereas the U. S. Circuit Court of Appeals of the Seventh Circuit has twice gone on record as saying that wage earners may combine, and to enforce such combination may resort to peaceful picketing. Nor have we been referred to a U. S. Court of Appeals that has held to the contrary.

Whether it was upon this point Counsel cited the McKenna case, 30 Fed. Rep. 48 (See page 56 of Petition), we do not know, but the facts were not as they are in this case. The opinion says: "The defendants not being in Plaintiff's employ, and without any legal justification." In the case at bar there was justification, legal as well as otherwise, and the wage earners employed in such mill were represented by the Central Trades Council.

In the case of Hagerty, 116 Fed. 510, the complaint was based on the ground that the defendants were trespassing on the premises, the lands, of the Coal Company. In the case at bar not even one witness testified that there was trespassing.

On page 63 Counsel has cited the Cinti. Typo. Union case, 45 Fed. 135, wherein the question of boycotting a newspaper is

involved. While the controversy arose over unionizing the printers we fail to see any reference made to the right of wage earners to combine as they did in the case at bar under the head of the Central Trades Council. Nor does it appear the right of peaceful picketing was involved.

It would hardly be possible that this Court will pay much, if any, attention, to what a Judge in Connecticut said, but nevertheless the Glidden case, 8 Atl. Rep. 890 (decided in 1887), is, on page 64, referred to.

In that case it would seem a demand was made that the employes be discharged and others hired in their places, and the Court said this was wrongful dictation. But in the case at bar it was simply a question of wages. The Tri-City Central Trades Council did not demand that any employee be discharged.

On page 69 Counsel has cited the Frank case, 63 A. J. Eq. 443. In that case the Court held that "the right of a master to have a servant continue in his employ without molestation or enticement by any third party **is a property right.**"

Suffice to say in this connection that no employer has such thing as a property right in his employee. The Master had a property right in **his slave** prior to the issuing, by Lincoln, of the Emancipation Proclamaton, we concede. But at no time has the American wage earner conceded any such right to an employer.

This doctrine of Master and Servant is of antediluvian English origin and, as has been said in a recent case "The

Ancient English rule that labor unions were unlawful does not prevail in the United States in view of the changed conditions existing, the rule being now settled that labor may organize for its own protection and to further the interest of the laboring classes, and may strike and persuade and induce others to join them by peaceable means."

Mitchell v. Hitchman Coal Co. 214 Fed. 685 (Decided 1914). (Fourth Circuit.)

In the Kane case, 23 Fed. 748, it was held "that employees of a Receiver might abandon their employment and persuade others to do so, by peaceable and lawful means." And that is all the wage earners are contending for in the case at bar.

Why the Mayor of Granite City is referred to, on page 11, as being a member of the Socialist party can be but for one reason, to prejudice, if possible, the cause of the wage earners before the Honorable Court.

We have not understood Socialists to be law breakers. We heard "A Socialist" defined by the greatest living American, probably, as being "one who is endeavoring to improve conditions." Hence, if Kirkpatrick is doing that, instead of being a criminal he is a benefactor. Probably his sympathies were with the wage earners in their controversy with the Steel Foundries people, but that would not deter him from fulfilling his oath of office and to see that life and property were protected. When asked, with reference thereto, he testified: "I am ready to give police protection and did give it" (Ab. 58). "As Mayor of the city, I consider I have plenty of police to protect the

property; I have done that all along and would have done it without this injunction and am ready and willing to do it now" (Ab. 59).

Sheriff Henry testified: "I had two deputies down there and told them to investigate and they reported there was not much doing. If it was necessary we would have provided deputies" (Ab. 62). While a careful perusal of the evidence will show that in every instance where there was any assault or a mix-up of any kind between strike-breakers and others, it was a disputed question as to who was the aggressor. Be that as it may, we have not sought to make any defense of lawlessness. Those connected with the Tri-City Central Trades Council **did not authorize or countenance lawless acts.** and the Defendants testified positively that no unlawful act was committed by them, or either of them.

As to the statement made on page 11 to the effect that Galloway, the President of the Central Trades Council, was present when a riot took place, is erroneous. This mix-up took place on the 13th and at some distance from the plant. When Galloway was asked, with reference thereto, he said. "I was not at the plant or on the picket line on May the 13th. I worked until five o'clock in Madison, an adjoining town; got back to Granite City about 5:30 and then I was in Boyd's Garage until 6 o'clock. I did not strike any of the strike-breakers or other employees, leaving the plant, nor did I strike nor assault these parties on any other day other than the 13th" (Ab. 56).

The Debs case, 158 U. S. 564, has been quoted. The opinion in this case was predicated upon the theory that there was a boycott against interstate traffic and the handling of mails. In that case Justice Brewer, on page 577, said: "Employees may not be restrained from using persuasion and other peaceable methods, or from aiding strikers by furnishing money from a relief fund." All the wage earners desire in the case at bar is the right to combine and the right to do peaceable picketing.

The statement made on page 12 to the effect that, "after the restraining order was issued the plant was operated without interference," is probably true. After the Central Trades Council was held to be an "unlawful combination" (Ab. 78) and the District Judge had declared that "there is no such thing as peaceable picketing" (Ab. 80), the hundreds of wage earners represented by such Trades Council were shorn of every weapon. They accepted such decision of such trial Judge as the law and as good law abiding American citizens observed it. No doubt had the decision of such District Judge been adverse to such Steel Foundries, they would have disregarded the same "until such time as the Supreme Court might pass on the constitutionality of the question involved."

The Statute with reference to Conspiracy cited on page 25 has reference to where "persons conspire * * * with fraudulent or malicious intent, wrongfully and wickedly to injure the business or property of another * * *."

There is no evidence in the record that the officers of the Tri-City Central Trades Council, or other defendants, intended to perpetrate a fraud or by malicious intent wrongfully to destroy the business or property of Complainant.

In the case of People v. Young, 188 Ill. App. 208 (decided 1914), certain wage earners, members of the Carpenters' Union had, under this Statute, been indicted, because of a strike and alleged interference with others, and Counsel for the prosecution cited the Franklin Union case, 220 Ill. 355, but the Court of Appeals refused to follow such holding and on page 212 cited the Kemp case, 255 Ill. 213. On page 212 the Court said: "Union men or other employees have the right to seek by peaceable persuasion to induce others to leave or refrain from working for their employer."

While it would seem that the State Court did in the Franklin Union case, 220 Ill. 378 (decided 1906), hold against the right of organized labor to picket, such decision, it would appear was predicated on the theory that "Labor is property," and to interfere between employer and employee was to deprive a person of his property without due process of law (P. 378).

And in the Barnes case, 232 Ill. 424 (decided 1908). The Typographical Union made a demand for an eight-hour day and such union was held to be an unlawful combination (P. 432). But to this holding Justice Farmer dissented (P. 437) and the opinion written by him and concurred in by Justice Scott is more in accord with modern views with reference to

the rights of wage earners. When the question of the rights of labor unions to combine came for the third time before the State Supreme Court, Kemp v. Division No. 241, 255 Ill. 212 (decided 1912), the Court was not inclined to take such a drastic view of labor organizations; and on page 220 said: "Labor Unions have long since been recognized by the Courts of this Country as a legitimate part of the industrial system of the nation. The ultimate purpose of such organization is, through combination, to advance the interests of the members by obtaining for them adequate compensation for their labor and it has been frequently stated by the American Courts that the fact that this purpose is sought to be obtained through combination, or concerted action of employees does not render the means unlawful. The purpose of organizing labor unions is to enable those employees who became members to negotiate matters arising between them and their employers through the intermediation of Officers and Committeemen of the Union and to accomplish their ends through concerted action" (P. 221).

"The demand that Appellees be discharged, and the threat that unless the Railway Company complied with the demand of the Union would call a strike of the employees of the Railway Company, in effect meant no more than the mere statement that the Union employes would no longer work with non-union employees, and if the Railroad Company chose to retain in its employ the non-union men the union employees would quit the service of the Company" (P. 222). "It has been comparatively

but a short time since it was unlawful for workmen to associate themselves together into such organizations as are now known as Trades Unions for the purpose of improving conditions of labor. Such organization was formerly held to be a criminal conspiracy" * * * (P. 224). "An agreement by a combination * * * to advance the interests of the Union and not having for its primary object the purpose of injuring others in their business or employment is lawful" (P. 224). "As to whether or not the object which this bill discloses was sought to be attained by the members of the Union was a lawful one * * * the authorities are clearly in conflict. * * *

"The precise question has never been passed upon in this State * * *. We are not inclined to follow the cases cited by Appellee (Street Car Company); we are of the opinion that the cases holding the contrary view (cited by the Street Ry. Employees' Union) are supported by the better reasoning" (P. 225).

"Without organization the Workmen would be utterly unable to make a successful effort to maintain or increase their wages or to enforce such demands as have been held proper" (P. 226).

"Appellees rely upon the Franklin Union case, 220 Ill. 355, and the Barnes case, 232 Ill., 424." In these cases the employees had gone out on strike and injunctions had been secured. * * * The injunctions had been violated. * * * While the matters involved in each case grew out of acts following a strike of

union employees, the question of the right to strike was not involved (P. 232). The case at bar partakes of none of the elements of a boycott. The primary object of a boycott being to inflict injury upon another has been held to be illegal. Here the primary object of the combination is to further the interests of the organization and improve the condition of its members. Whatever injury may follow to others is merely incidental" (P. 234-5). And is that not what the Tri-City Central Trades Council contemplated? The latest ruling of the State Supreme Court would indicate, therefore, that such Court does not hold it unlawful for wage earners to combine.

It has been said that any employer of labor, be he ever so well meaning, stands in the way of future progress if he insists upon dealing with his workmen "as individuals." Should such policy succeed, it would no doubt mean the degradation and impoverishment of the working classes. If organized, the wage earners may bargain collectively; this means concerted action and the right of wage earners to be represented. It is apparent that one not in the immediate employ of a person is in a better position to represent the employees. Such representative feels more independent for the reason he is not subject to dismissal. For an employer to insist upon treating with his employees "as individuals" would mean that each one of the thousands in a plant would have the "individual contract" and that would mean long hours, small pay, the sweat shop, etc;

while "collective bargaining" would mean improved conditions, better workmanship and more exalted citizenship.

We submit that it may not always be possible for the employer and employees to agree, but when, as in the case at bar, the cardinal principle of the Tri-City Central Trades Council sets forth specifically "To settle all disputes between employer and employees in relation to wages, etc., by arbitration instead of strike" (Ab. 54). And, in this case had the Petitioner agreed to arbitration there would have been no strike; there would have been no conflict between strike-breakers and others, and there would have been no cause for the ill feeling that was later engendered. And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.

It is not uncommon for the employer to say that "peaceable picketing will interfere with my business." To not permit "peaceable picketing" the wage earner might retaliate by saying to the employer: "You are interfering with my right to live and enjoy the comforts of life."

Subsequent to the Civil War the wage earners of America have made marvelous strides. Wages have been increased, the work day shortened, the things he can buy, political privileges, legal rights, in skill, intelligence and the standing he has attained, the esteem in which he is held and the humane treatment which to him is accorded. But to obtain these, great sacrifices have been made by the pioneers of organ-

ized labor. Every advance of the wage earner has been through concerted action. Men interested in their fellow men have gone about the work of organization, devoting their time, without remuneration, to the cause. They dared to do this even when cognizant of the fact that they might be placed on the "black list," and not only they, but their loved ones as well be made to suffer for the necessaries of life. They made this sacrifice so that the conditions of the wage earners of America might be improved. **Not by means of violence,** for the one who would destroy life or property, or violate the law of the land, is a hindrance to the cause, but by insisting upon the right to organize, combine, and to enforce such combination by peaceable picketing, or other lawful means.

While Counsel for Petitioner has cited a number of Federal Court decisions they are all the opinion of a **District Judge** except two, viz: The Sailors' Union case, 156 Fed. 450 (Ninth Circuit), and the Allis Chalmers case, 166 Fed. 45 (Seventh Circuit). In the former it would appear that when a vessel was about to depart from a point on the California coast, employees were pinioned and imprisoned to keep them from going on the vessel. The Court, on page 453, said: "The purpose of the injunction was to prevent acts of lawlessness." Nothing of the kind occurred in the case at bar. The trial judge held it to be unlawful for the workingmen to combine (Ab. 78). And he held furthermore that there was no such thing as peaceful picketing (Ab. 80).

In the other case (Allis-Chalmers), the U. S. Circuit Court of Appeals held that workingmen did have the right to combine and did have the right to do peaceable picketing. Wherever these questions have arisen in other Circuits the holding of the U. S. Circuit Court of Appeals has been in conformity with the holding made by the Seventh Circuit in the Allis-Chalmers case.

Petitioner has not shown that the Supreme Court has decided the questions involved contrary to the ruling of the U. S. Circuit Court of Appeals. True, two Supreme Court decisions are cited: One the Burgess Case, 107 U. S. 20 (decided in 1882), but it does not allude to a combination of wage earners; nor of the right to do peaceable picketing. It appears that that case was cited: "because the U. S. Circuit Court of Appeals did not follow the holding of the State Supreme Court." And yet we have shown that the State Supreme Court itself in a later case (255 Ill. 213) would not follow the holding therein made. On Page 33 the U. S. Supreme Court said: "We do not consider ourselves bound to follow the decision of the State Court in this case. The Federal Courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to that of the State Courts and are bound to exercise through our judgment as to the meaning and effect of these laws" (P. 33).

The other Supreme Court holding cited is the Gompers' case, 221 U. S. 418. That was a suit instituted originally under the Sherman Anti-Trust law, and the question involved was, as to

whether or not the defendants were guilty of a contempt of Court (P. 441). While the District Judge had adjudged Gompers et al guilty, the Supreme Court reversed such ruling (P. 452).

Hence, without even one decision of a U. S. Court of Appeals, or one holding of the U. S. Supreme Court, to sustain the contention of Complainant, to the effect **that working men have not the right to combine,** and have not the right to do **peaceable picketing,** the petitioner is not in position to seriously ask this Court to award Certiorari.

We have referred to every case cited by Counsel in support of their Application for Certiorari, scattered as they are throughout the petition, and regardless of any particular heading. Still we did it to ascertain, if possible, on what theory the attempt was being made to have this Court award Certiorari, but without avail, for, in our judgment, no showing has been made to warrant the Court in granting such Application.

We therefore respectfully submit that the Application for a Writ of Certiorari should be denied.

FRANK C. SMITH,
Attorney for Respondents.

In the Supreme Court of the United States.

AMERICAN STEEL FOUNDERS,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, ET AL.,
Respondents.

REPLY OF PETITIONER TO BRIEF OF RESPONDENTS.

I.

Except for repeated claims in the brief of respondents, without support or foundation in the record, that the respondent Tri-City Central Trades Council represented the employees of petitioner, there would seem to be an entire want of appreciation by the respondents of the petitioner's contentions.

In respondents' statement of the case at page 2, there appears the following: "At their (men in the employ of petitioner) request a committee was appointed to confer with the management. Ab. 54." There is not at page 54 nor on any other page in the record any evidence to justify this statement. Indeed, the record is barren in this regard.

At page 13 of respondents' brief we find the following with reference to a statement in one of the authorities cited, to the

effect that employees had the right to select a committee to request a conference, etc.: "And that is just what the employees of the Mill Company did in this case, delegate such duty to the Tri-City Central Trades Council." The Court will look in vain for anything in the record to sustain that statement.

At page 23 of respondents' brief we find: "While in the case at bar the strikers were represented by the Tri-City Central Trades Council"; and at page 26 the following: "And the wage-earners employed in such mill were represented by the Central Trades Council." We say with confidence the record not only fails to support these statements, but on the contrary expressly refutes and disproves them.

Walcher, the works manager of the petitioner, on cross-examination by counsel for respondents, testified (Rec. 51 and 52), as follows:

> "Earl Galloway was admitted to my office and told me there was a committee that represented the labor organization; *I asked him if the committee represented our employees and he said they did not*, and I told him we didn't recognize any labor organizations."

Galloway did not deny or contradict the testimony of Walcher to the effect that the committee of which he, Galloway, was chairman did not represent the employees of petitioner. When he was interrogated on this point he testified (Rec., 55):

> "As chairman I went to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; he asked me who the committee was; if it was any of his employees; I told him not at the present time; that there had been but they were representatives of the different local unions."

In the cases cited by respondents the Court will find wherever a labor organization acted in behalf of employees authority therefor was first expressly given by such employees.

II.

To overcome the petitioner's contention that the Illinois rule, as expressed in Barnes v. Typographical Union, 232 Ill., 425, should obtain and be followed in the case at bar, respondents cite Kemp v. Division No. 241 Assn., 255 Ill., 213. A reading of the majority opinions in that case will demonstrate that the case did not nor was it intended to overrule Barnes v. Typographical Union, *supra ;* also that it does not bear upon the questions involved here. The purpose of the bill in that case as stated by the Court there, was as follows :

> " The only reasonable conclusion to be deduced from the allegations and prayer of the bill is that appellees by this proceeding seek to restrain the union and its officers from calling a strike of its members, the obvious purpose of the injunction sought being to prevent the union employees of the Railways Company from quitting their employment *in accordance with the vote previously taken, by which those employees as members of the union declared that they would cease to work with men* who, after receiving benefits through their organization refused to continue members. * * * The question presented for our determination, therefore, is whether a court of equity is authorized upon application by the non-union employees to restrain the union and its officers from calling a strike of the union employees *in accordance with the vote previously taken by the union employees as members of the union*, where the purpose of the proposed strike is to compel the employer to discharge non-union employees who are engaged in the same class of work." (Italics ours.)

The Court will note that the question of whether or not there should be a strike was submitted to and voted upon by the employees of the Railways Company, and that representations or action of the organization in dealing with the Railways Company was upon the express authority conferred by the vote of the employees.

The case at bar presents no such situation. The Tri-City Central Trades Council arrogated to itself the prerogative and privilege to demand from petitioner a change in wages, without authority or request of the employees.

The Court in Kemp v. Division No. 241 Assn., *supra*, further says:

> "The purpose of organizing labor unions is to enable those employees who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union, and to accomplish their ends through concerted action. *If duly authorized by the employees to adjust any controversy arising between them and their employers, the union, its officers and committees, are merely acting as agents of the employees in the matter.* If the union employees have the legal right to inform their employers of their refusal to work with the appellees, they had the legal right to convey that information to the employer through an agent or agents, and the agent or agents who so act would not commit an actionable wrong thereby, nor by reporting back to the union employees the result of the conference with the employer." (Italics ours.)

No case is cited by respondents to sustain the conduct of respondents, without the request of the employees of petitioner and admittedly not representing them, through a self appointed committee demanding from the petitioner a change in the wages, which at the time as shown by the record were satisfactory to both the petitioner and its employees.

The undisputed evidence is that the Tri-City Central

Trades Council and not the employees of petitioner declared a strike against the petitioner. That the employees made no complaint of their wages or working conditions. That the relations between the petitioner and its employees were in perfect amity and accord. That the Tri-City Trades Council demanded from petitioner a change in the scale of wages, and upon refusal to deal with its committee, declared a strike against the petitioner. There is no evidence in the record to justify the argument or contention that any employees of the petitioner made complaint to either the Tri-City Trades Council or to any union affiliated therewith. The evidence, so far as the record discloses, is to the contrary.

The employees of the petitioner did not strike nor cause any strike. A circular appearing on page 30 of the record states who called the strike ; it reads as follows :

> "UNION MEN AND ALL LABOR STAY AWAY FROM THE AMERICAN STEEL FOUNDRY, GRANITE CITY, ILL. ; ALL TRADES ARE ON STRIKE
>
> For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was re-resumed recently.
>
> By Order of Ways and Means
> COMMITTEE OF TRI-CITY CENTRAL TRADES COUNCIL,
> Endorsed by Tri-City Trades Council."

Even the two men who quit the employ of petitioner as a result of the strike called by the Tri-City Trades Council had no relation to or connection with the strike, and as disclosed by the record, knew nothing of it until after the strike had been launched. Each testified that he quit work because a strike was on.

In that connection note the facts in Kemp v. Division No. 21 Assn., *supra*, cited by respondents :

> "The threat made by the committee that the members of the union would call a strike of the em-

ployees of the Railways Company unless their demands were complied with, meant no more than that the union employees would be notified to quit work in a body at a definite time if the non-union employees were retained in the service. *This action of the committee, if not then authorized, was ratified by an almost unanimous vote of the union employees. The union employees thereby authorized and instructed the union, its officers and members, to call the strike which it is sought by this proceeding to prevent. The contemplated action of the union employees is not the result of the dictation of any officer or officers of the union or of any person not interested in the employment, but is the voluntary action of the union employees of the Railways Company.*" (Italics ours.)

In the case at bar the very reverse state of affairs existed. The employees did not authorize the Tri-City Trades Council or its self-appointed committee to act for them, and did not ratify their action, but on the contrary were ignorant of the Trades Council's activities, and with the exception of two men, Churchill and Cook, refused to leave the employee of the petitioner, and in consequence were subjected to indignities, intimidation, terrorism and assault.

This is not a case where employees had a difference with the employer and by their own act and authority sought relief or compliance with demands by inaugurating and conducting a strike against the employer, as was the case in Iron Moulders Union v. Allis-Chalmers Co., 166 Fed. Rep., 45, upon which the Circuit Court of Appeals based its opinion.

See Wabash R. Co. v. Hannahan, 121 Fed. Rep., 562, cited by respondents. We call the Court's attention to that part of the opinion appearing on page 569 as follows:

"In the summer of 1902 the Western Association of General Committees, etc., was organized at Kansas City, Mo., for the avowed purpose of securing an advance of 20% in wages of trainmen, and other employees of roads west, northwest and southwest of Chicago. *The trainmen of the Wabash did not at first*

*join this association, but later through their general committee, notified the president of the company that they had become identified with that movement and would expect an increase of wages accordingly. The firemen also at about the same time through their committee notified the president of the company of their desire for a new scale of wages and rules. * * * Repeated conferences and much correspondence ensued, until finally the president of the company questioned the authority of the committees to act for any employees. Thereupon a written authority was secured from a large number of such employees, authorizing the committees to represent them.*" (Italics ours.)

Respondents also cite Kolley v. Robinson, 187 Fed. Rep., 415. We direct the Court's attention to the opinion, at page 417, as follows:

> "We have examined this record with care, and think the allegations of the bill are fully sustained by the evidence. The authorities are all in harmony *that union or other laborers have the right to quit the service of an employer when they choose to do so*, and that they may by peaceful methods persuade others to quit the service of an employer." (Italics ours.)

There was there no question of activity and strike by others than employees themselves. The injunction in that case was upheld.

Respondents also cite Mitchell v. Hitchman Coal & Coke Co., 214 Fed. Rep., 686. The Court will find in the opinion at page 690, that the purpose of the injunction was to restrain a labor organization (United Mine Workers of America) from seeking membership amongst the employees of the Coal Company. The questions presented in the case at bar were in no way involved in that case, and the principal point decided was that the labor organization was not in itself unlawful and should not be enjoined from peaceably seeking to augment its membership from amongst the employees of the Coal Company.

III.

Respondents admit that but for the injunction granted in this case, the strike inaugurated by the Tri-City Central Trades Council would have been successful, and that petitioner would have had to close down its plant unless it granted the demand made by the Tri-City Trades Council, a stranger to both the petitioner and its employees and a gratuitous meddler in their affairs. On page 35 of respondents' brief the Court will note the following :

> "And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill, even at such a reduced force as it is."

One of the cases cited by respondents in their brief is Arthur v. Oakes, 63 Fed. Rep., 310. The opinion is by Justice HARLAN, sitting as Circuit Judge, and on page 324 we find expression fully confirming the contentions of petitioner that the acts and conduct of the respondents constitute an illegal conspiracy and should be enjoined. The Court says :

> "It seems entirely clear upon authority that any combination or conspiracy upon the part of these employees would be illegal which has for its object to cripple the property in the hands of the Receivers and to embarrass the operation of the railroads under their management, either by disabling or rendering unfit for use engines, cars or other property in their hands or by interfering with their possession, or by actually obstructing their control and management of the property, or by using force, intimidation, threats or other wrongful methods against the Receivers or their agents or against the employees remaining in their service, or by using like methods to cause employees to quit or to prevent or deter others from

entering the service in place of those leaving it. Combinations of that character disturb the peace of society and are mischievous in the extreme. They imperil the interests of the public, which may rightfully demand that the free course of trade shall not be unreasonably obstructed. They endanger the personal security and the personal liberty of individuals who in the exercise of their inalienable privilege of choosing the terms upon which they shall labor, enter or attempt to enter the service of those against whom such combinations are specially aimed."

IV.

As stated in the petition for writ of *certiorari* and the brief in support thereof, petitioner has not sought and does not claim any right to interfere with or limit the right of any laborer or any employee to quit its employ; or to become a member of any labor organization; or singly or collectively to make demands for changes in wages or working conditions; or by joint action with others of its employees to call a strike as a means for securing a change in wages or working conditions; but petitioner does contend and does insist that the Tri-City Central Trades Council had no right, on its own initiative, to make demands upon the petitioner for a change in wages and upon petitioner's refusal to deal with its committee to call a strike against the petitioner, force the employees of the petitioner who were satisfied with their wages and working conditions and had not made no complaint, to quit their work, leave petitioner's employ, break their contracts of employment, and compel petitioner to close down its plant, to the great injury of its business and property.

The Tri-City Trades Council did not represent petitioner's employees, and the chairman of its committee, Galloway, so

testified on the trial. The Tri-City Trades Council was a mere meddler, an interloper and a trespasser, and every act committed by it or its agents or its pickets was illegal, and the manner of such act or conduct and the nature of the "picketing" and the "persuasion," we insist, were entirely immaterial.

V.

In further support of our contention that the Illinois rule should obtain, we direct the Court's attention to the very recent case of Phillip Henrici Co. v. Alexander, 198 Ill. App., 568 (cited below), dealing with practically the same situation as in the case at bar. There was no strike by the employees in that case, but an effort was made by labor organizations on their own initiative for the purpose of bringing about a change in conditions throughout Chicago, to force the employees of the Henrici Company to quit and strike. The court below qualified the injunction against picketing by adding "in such manner as to intimidate, threaten or coerce any person or persons from entering or who may desire to enter said premises for the purpose of patronizing the complainant or for any lawful purpose whatsoever."

The Appellate Court in that case, upon the authority of Barnes v. Typographical Union, *supra*, directed the qualification above quoted be stricken out and that the injunction against picketing be unlimited.

Respondents claim that Kemp v. Division No. 241 Assn. overruled Barnes v. Typographical Union and other cases. This we dispute.

Nevertheless, we call attention to the following language of Justice CARTER in Kemp v. Division No. 241 Assn., *supra*:

> "The United States Supreme Court has not decided the question now before us, but the reasoning of the

federal courts of intermediate and appellate jurisdiction in the cases heretofore cited tends strongly to support the contentions of appellants. See, for a review of the authorities and principles involved, Iron Moulders Union v. Allis-Chalmers Co., 166 Fed., 45."

The Circuit Court of Appeals in the case at bar misinterpreted and misapprehended Iron Molders Union v. Allis-Chalmers Co., *supra*. It does not support or sustain the opinion filed.

The questions presented are serious and important and have not been decided by this Honorable Court; we respectfully ask for a hearing thereon.

MAX PAM,
HARRY B. HUBD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

Office Supreme Court, U.S.
FILED
OCT 3 1921
JAMES D. MAHER

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1921.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL et al.,
Respondents.

REVISED BRIEF OF RESPONDENTS.

FRANK C. SMITH,
Solicitor for Respondents.

St. Louis Law Printing Co., 415 N. Eighth St. Bell, Main 1819

East St. Louis Phone East 75. St. Louis Main 5265
FRANK C. SMITH,
ATTORNEY AT LAW
Central National Bank Building, 705 Olive St.

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REVISED BRIEF OF RESPONDENTS.

To the Honorable Supreme Court:

Inasmuch as this is the third time that this cause has been set down for oral argument, and a change having been made in the personnel of the Court since the second argument, we have considered it expedient that a revised brief be filed. Not because of anything new, as far as Court rulings are concerned, but to enable the Court to more readily grasp the issues involved.

STATEMENT.

The American Steel Foundries, a New Jersey corporation, authorized to do business in Illinois, had a large steel plant in Granite City, Illinois. In November, 1913, it closed down, and at that tme had approximately 1,600 working men in its employ (Abs., p. 24). These represented the various crafts. The Tri-City Central Trades Council was—and is—an organization representing the working men of Granite City, Madison and Venice, the meetings of which are open (Abs., pp. 43-58). Thirty-seven locals, representing the various crafts, comprise the Tri-City Central Trades Council, each local having six representatives. This Central Trades Council has a constitution and by-laws, a portion of which counsel for appellant saw fit to introduce in evidence (Abs., pp. 43, 60). These excerpts show that the Tri-City Central Trades Council is affiliated with the American Federation of Labor, and its primary purpose to aid any branch of labor that might be oppressed, and that all may form one brotherhood for the defense and protection of the laboring classes (Abs., p. 43). On April 6, 1914, the plant reopened, and while 1,300 was the number "laid off" (Abs., p. 51), it only called for approximately 370 (Abs., p. 23). Welcher, the superintendent, testified that

80 or 90 per cent of these were old men, and he assumed were members of the various organizations (Abs., p. 41). While he did not specifically say organizations connected with the Tri-City Central Trades Council, he certainly must have had these in view, because no others had been mentioned. Wages were reduced from two to nine cents an hour, and as a result complaints were made by those affected to the Central Trades Council, and the Council was requested to take up the matter (Abs., pp. 43, 44, 57, 58). A committee was appointed "to wait upon this corporation to arbitrate the question" (Abs., p. 44). This was on April 20 (Abs., p. 44). When the committee called at the plant and asked for a conference, but one of the number was admitted. To him the superintendent said that the company would not meet with any representative of organized labor; if anybody around the plant felt mistreated or had any grievance, to come in as individuals (Abs., p. 44). To the chairman of the committee the superintendent stated that the company was running an open shop, and refused to deal with one representing a labor union (Abs., p. 25); that we had nothing to arbitrate (Abs., p. 41).

The committee made a report to the Central Trades Council, whereupon a strike order was issued (Abs., p. 44). That was on April 22 (Abs., pp. 41-44). The

Commercial Club of Granite City, feeling that a settlement of the wage controversy was something to be desired, called a conference and at such there were representatives of the Granite City Commercial Club, the Steel Plant and the Central Trades Council (Abs., p. 44). At that meeting the representative of the Steel Plant said, "We have no arbitration offer to make to these laboring men" (Abs., p. 41). The Tri-City Central Trades Council, pursuant to the strike order, appointed pickets; "They were from the different crafts that were connected with the reduction in wages" (Abs., p. 45). On May 18, the Steel Foundries applied for an injunction, alleging that the defendants had combined and conspired to prevent the Steel Foundries from employing skilled laborers—that pickets appointed had committed assaults, etc. (Abs., p. 5). A temporary injunction was granted. On June 4, 1914, the defendants filed an answer (Abs., p. 15). A hearing was had on June 8, 1914. At the conclusion of the hearing the Court rendered an opinion (Abs., p. 63), and a decree making the injunction permanent was approved (Abs., p. 66). From this final decree (Abs., p. 69), an appeal was taken to the United States Circuit Court of Appeals (Abs., p. 73).

On January 26, 1915, the cause came on for hearing in said court and was argued by counsel. On May 23, 1916, the Court directed a reargument. The

reargument took place on June 8, 1916. On December 6, 1916, the United States Circuit Court of Appeals reversed the decree of the District Court, with directions to modify the same (Abs., p. 87). After the Court had, on January 24, 1917, denied a petition for rehearing, the American Steel Foundries did, on March 7, 1917, file a petition in this court for certiorari. This being granted, the case was appealed. On October 8, 1918, the case was argued orally. It was reargued on October 9, 1920. The case has been ordered redocketed and set down for a third argument before a full Court at the October Term, 1921.

The two questions in which the respondents are most vitally interested are: The holding of the District Judge, wherein he declared the Tri-City Central Trades Council to be an unlawful combination (Abs., p. 63). And wherein he said that there is no such thing as peaceful picketing (Abs., p. 63). The decree prepared by counsel for petitioner (Abs., p. 65), containing the views of the trial judge, was reversed by the United States Circuit Court of Appeals (Abs., p. 87).

While this injunction, issued on May 18, 1914, was reversed by the United States Circuit Court of Appeals, no remanding order has been issued and conditions at Granite City remain unchanged.

BRIEF.

I.

For workingmen to organize into unions and to concentrate their unions under one head, known as the Central Trades Council, the object of which is to improve the conditions of the toilers, is not an unlawful combination.

Thomas v. Cinti. etc. R. R., 62 Fed. 805;
Arthur v. Oakes, 63 Fed. 310-21;
Iron Molders' Union 125 v. Allis-Chalmers Co., 166 Fed. 45;
Kemp v. Division etc., 255 Ill. 213-44;
People of the State of Illinois v. Young, 188 Ill. App. 288;
Beaton v. Turant, 102 Ill. App. 128;
Everett v. R. T. Union, 105 Va. 188-94;
Ex parte Heffron et al, Mo. Court of Appeals, 162 S. W. 652;
Ames v. M. P. Ry., 62 Fed. 7-14;
Beck v. Teamsters' Union, 118 Mich. 497-526;
Pettibone v. U. S., 148 U. S. 197;
Kane v. U. S., 23 Fed. 748.
Clayton Act, Sec. 6, enacted by Congress (Oct. 15, 1916) while this case was pending on appeal in U. S. Ct. of Appeals.

II.

To order a strike is not unlawful. Labor unions have this right.

Thomas v. Centi etc. R. R., 62 Fed. 817;
U. S. v. Elliott, 62 Fed. 801;
Wabash R. R. v. Hannahan, 121 Fed. 563;
Kelly v. Robinson, 187 Fed. 415;
Kemp v. Division etc., 225 Ill. 220-24;
Beaton v. Turant, 102 Ill. App. 128;
People v. Young, 188 Ill. App. 288;
Kemp v. Division etc., 255 Ill. 213;
Allis-Chalmers, 166 Fed. 45;
Arthur v. Oakes, 63 Fed. 310-27;
Goldfield Con. Mining Co. v. Miners' Union, 159 Fed. 500;
Kelly v. Robinson, 187 Fed. 415;
Sailors' Union etc. v. Hammond etc., 156 Fed. 453;
Hopkins, v. U. S., 171 U. S. 593-4;
Everett etc. v. R. T. Union, 105 Va. 188-95;
Karges Furn. Co. v. Amalgamated Wood Workers' Union, 165 Ind. 421;
Bohn Mfg. Co. v. Hollis, 54 Minn. 223;
Surrell Mfg. Co. v. Terry, 106 N. Y. Sup. 438;
International etc. v. Cummings, 170 N. Y. 315-21;
Gray v. Building Trades Council, 91 Minn. 172-79.

III.

To picket a plant and for pickets to try and persuade men from taking the places of those who go out in response to a strike order is not unlawful.

Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 45;
Ex parte Heffron et al. (Mo. App. Ct.), St. Louis Dist. 162, S. W. 652;
Beaton v. Tarrant, 102 Ill. App. 129;
People v. Young, Ill. 188, App. 288;
Kargus etc. v. Woodworkers' Union, 165 Ind. 422;
Clothing Co. v. Watson, 168 Mo. 133-50;
American Steel Mine Co. v. Wire Drawers etc., 90 Fed. 608-09;
Gray v. Building Trades Council, 91 Minn. 171;
18 Am. & E. of Law (2nd Ed.) 87;
High on Injunction, Section 1415j;
Levy v. Rosestein, 66 N. Y. (Sup.) 438;
Walter A. Wood etc. v. Toohey, 186 N. Y. S. 95;
Clayton Act, Section 20, passed by Congress (1916) while this case was pending on appeal in U. S. Ct. of Appeals.

IV.

An injunction in an industrial dispute should not prohibit either persuasion or picketing.

Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 46-51,
U. S. v. Kane, 23 Fed. 748-50;

Allis-Chalmers v. Lodge, 111 Fed. 264;
Beck v. Teamsters' Union, 118 Mich. 497-17-25;
Hamilton-Brown Shoe Co. v. Saxey, 131 Mo. 212;
Gray v. Building Trades Council, 91 Minn. 171-85;
Everett v. Tpyo. Union, 105 Va. 188-203;
People v. Young, 188 Ill. App. 288;
Ex parte Heffron (Mo. App. Ct.), 162 S. W. 652;
American Steel Wire Co. v. W. D. Union, 90 Fed. 608;
Pope Motor Co. v. Keegan, 150 Fed. 149;
Surrell Mfg. Co. v. Terry, 106 N. Y. Sup. 438;
Kinloch Telephone Co. v. Local Union, 265 Fed. 312;
Clayton Act, Sec. 20, enacted by Congress while this case was pending in the U. S. Circuit Court of Appeals.

V.

A court is not warranted in enjoining persons from congregating on the sidewalk, or for addressing remarks concerning the business of another, nor from distributing circulars.

Ex parte Heffron et al., Mo. Ct. of Appeals, 162 S. W. 652;
People v. Young, Ill. Ct. of Appeals, 188 App. 288;
Gray v. Building Trades Council, 91 Minn., 171-82-85;
Marx & Haas Clo. Co. v. Watkins, 168 Mo. 134.

VI.

To prevent an American working man from exercising the right of persuasion, would deprive him of the right of free speech guaranteed by the Constitution. To prohibit this right at or near the plant, on the streets leading to such plant, "or elsewhere," is too general.

Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 45-50;
Marx & Hass Clo. Co. v. Watkins, 168 Mo. 133;
18 Am. & E. Enc. of Law (2nd Ed.), 87;
U. S. v. Kane, 23 Fed. 748;
Kelly v. Robinson, 187 Fed. 415;
Kinloch Tel. Co. v. Electric Worker, 265 Fed. 312 (Ky.);
Clayton Act, Sec. 20, enacted by Congress in 1916, while this case was pending in the U. S. Circuit Ct. of Appeals.

VII.

Where a remedy for any particular wrong or injury has been provided by statute, the general rule is that no relief in equity can be given by an injunction.

Cumberland & Penn. R. R. v. Pennsylvania Co., 57 Md. (267-71);
Weber v. Timlin, 37 Minn. 274;
Hornsby v. Burdell, 9 So. Car. 303-8;
Northern Pacific Ry. v. Whalen, 149 U. S. 157;
Hurd's R. S. of Illinois (1911) (Assault), Sec. 23, p. 753.

VIII.

Equity will not interfere to prevent the commission of criminal or illegal acts, unless there is some interference with property rights.

In re Debbs, 158 U. S. 564-93;
Northern Pacific R. R. v. Whalen, 149 U. S. 157-62.

IX.

No employer may have a right of property in his workingmen.

High on Injunction, Section 20;
Northern Pacific R. R. v. Whalen, 149 U. S. 157-162;
Section 6 of the Clayton Act, enacted by Congress (1916) while this cause was pending on appeal in U. S. Circuit Ct. of Appeals.

X.

Lawful and unlawful means distinguished.

Everett v. R. T. Union, 105 Va. 188-99;
Kane v. U. S., 23 Fed. 748-51;
U. S. v. Elliott, 62 Fed. 801;
Gray v. Building Trades Council, 91 Minn. 171-81;
Franklin Union v. People, 220 Ill. 355-88;
High on Injunction, Vol. II, page 1421, Sec. 1415j;
Beck v. Teamsters' Union, 118 Mich. 497-527;
Diamond Block Coal Co. v. United Mine Workers (Ky.), 222 S. W. 1079.

XI.

The evidence in the whole did not warrant the findings of the District Court as set forth in the final decree.

People v. Sullivan, 218 Ill. 437;
Dalton v. U. S., 154 Fed. 461-63;
Iron Molders Union v. Allis-Chalmers, 166 Fed. 45.

XII.

The decree is fatally defective because of its ambiguity and vagueness.

10 Enc. of Pl. and Pr., 1040;
22 Cyc 959-966;
Whipple v. Hutchison, 4 Blat. 190-92;
High on Injunction, 1st ed., Vol. I, Sec. 38, page 26;
Laurie v. Laurie, 9 Paiges Chy. (N. Y.) 234;
Moat v. Holbein, 2 Edw. Ch. 188;
Avery v. Onillion et al., 10 La. 127;
St. Louis Min. & Mill. Co. v. Montana Mining Co., 58 Fed. 129-32;
Arthur v. Oakes, 63 Fed. 310-15-19-27;
Swift & Co. v. U. S., 196 U. S. 375-401;
Iron Molders Union v. Allis-Chalmers, 166 Fed. 45-52.

XIII.

No constitutional question being involved, complainant is compelled to rely solely upon diverse citizenship to confer jurisdiction.

XIV.

As to whether or not a statute is to be given a retroactive effect depends on the language of such statute.

Clayton Act, Sections 24, 25;
Moog v. Randolph, 77 Ala. 597;
Wrightman v. Boone Co., 88 Fed. 435;
Sturgiss v. Carter, 114 U. S. 511;
Vol. IX, Cyc, p. 5;
Vol. XXXVI, Cyc, p. 5;
Vol. XXVI, Am. & E. of Law, p. 529;
Duplex Printing Press v. Deering, 254 U. S. 443.

ARGUMENT.

I.

To charge the Tri-City Central Trades Council with being an unlawful conspiracy is clearly erroneous. According to the evidence, the Trades Council, composed of thirty-seven local unions, has one purpose in view: "To bring within the folds of organization every department of productive industry in the Tri-Cities and vicinity, and to attach them to this union for the purpose of securing their co-operation in defending and advancing the interests of the working classes" (Abs., pp. 43, 60); "to assist each other in securing fair remuneration for labor and forcing recognition of our rights as free citizens, to join and participate in any organization not in violation of the fundamental laws of the land, and enforce that right by withdrawing and using our utmost influence to induce others to withdraw all patronage from all employers who seek to control the mind as well as the labor of the workers * * * to settle all disputes between employers and employes in relation to wages, etc., by arbitration instead of strikes" (Abs., p. 60). Galloway, the president, testified "that when unable to settle disputes by arbitration we strike" (Abs., p. 46). Surely, there is nothing in the constitution

and by-laws to warrant anyone in making the charge that the Central Trades Council is an "unlawful conspiracy," and yet the trial judge so held (Abs., p. 63). The word "conspiracy" was defined in the Pettibone case (148 U. S. 197) as:

> "A combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means."

There is not a scintilla of evidence that the Tri-Cities Central Trades Council, or other of the defendants, formed, or attempted to form, a conspiracy. When the company declined to arbitrate the wage dispute, efforts were made, through lawful means, to keep men from entering or working at the plant, until the company would advance the wages to the former scale or arbitrate the difference (Abs., p. 46). Surely, they had this right. Peaceful picketing, we contend, is not unlawful.

President Galloway testified: "The pickets were not authorized to commit any unlawful act. That wasn't the intention of the Central Trades Council; that isn't the way the Council carries on business" (Abs., p. 46).

Lamb, who represented the Machinists' Union, testified: "The pickets conveyed information to those seeking employment, going in there, that a strike was on, and asked their co-operation not to go in under the reduced rate. We absolutely did not authorize any assaults to be committed" (Abs., p. 48).

Wade, treasurer of the Tri-City Central Trades Council, testified: "We indorsed the action in reference to the pickets. We didn't authorize any unlawful or wrongful act" (Abs., p. 58).

Cavenaugh, the secretary, testified: "No one connected with the Council authorized any unlawful act" (Abs., p. 57).

If unlawful acts were committed these may not be charged to the Tri-City Central Trades Council.

In the Karges case (165 Ind. 420) the Amalgamated Union was charged with being an unlawful conspiracy, but the Court said it was not. If individuals were guilty of having committed assaults, the injunction might be applied to them, but not to the Amalgamated Union, for the reason stated on page 426:

> "The peaceful policy adopted by the union and given as instructions to the pickets was adopted and given in good faith."

In the case at bar, the testimony of the officers of the Central Trades Council is to the effect that no unlawful act was authorized. Quite true, there is a difference of opinion as to what may be considered lawful. The officers of the Trades Council believed that to place pickets on the streets leading to the plant, to try and persuade working men not to go into the plant to work while the strike was on, was within the law. The District Judge, however, was of the opinion that any kind of picketing was unlawful (Abs., p. 64). At common law, under a decision rendered in 1721, labor unions in England were held to be criminal conspiracies. An act of Parliament in 1824 legalized labor unions. Even after the passage of the act some English courts continued to outlaw them as combinations in restraint of trade, but legislative enactment in 1876 has made labor—in England—free (24 Cyc, pp. 818-19).

> "Legislatures as well as courts now recognize the rights of laboring people to organize for the purposes of promoting their common welfare, elevating their standard of skill, advancing and maintaining their wages, fixing the hours and rate of wages" (24 Cyc 819).

In the Everett case (105 Va. 188) the Court said:

> "It is now well settled by the decisions of the courts of the U. S. and of the highest courts of

a majority of the states in the Union, that labor may organize as capital does for its own protection and to further the interests of the laboring class" (p. 194).

"While at common law, interpreted by the English decisions, and a few of the earliest decisions of the courts in this country, labor organizations formed for the purpose of controlling the rate of wages were regarded as a criminal conspiracy, but these early decisions of the courts of this country were soon departed from by other cases, notably in Massachusetts, New York and Pennsylvania, which placed labor combinations upon legal equality with capitalistic combinations, by holding that it was not a criminal conspiracy for workmen to combine for the purpose of enhancing the rate of wages" (p. 195).

The trial judge who heard the evidence in this case had not gotten away from the early decisions of the English and American courts, for he said:

"This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now, such a combination is unlawful" (Abs., p. 63).

On page 64 he said:

"The proof here sustains the averments of the bill as to the illegal combination; such a combina-

tion cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful."

In the Kane case (23 Fed. 748) the Court held:

"That to establish a conspiracy—an unlawful combination—it must be shown the defendants entered into an agreement to do an unlawful thing. If such an agreement was entered into then the act of one would be the act of all. But where no such unlawful agreement was entered into, the unlawful act of one would not bind the other."

Unless this Court will hold an agreement to do peaceful picketing, thus try to enforce a demand, unlawful, then the contention that the Central Trades Council is an unlawful combination is without merit. When the management of the steel plant declined to restore the former scale of wages, and refused to arbitrate the wage dispute, there was no other alternative except to order the strike and to enforce such strike order through peaceful picketing. To prove that there was peaceful picketing all we have to do is to consider the testimony of the officials of the company:

Welcher, the superintendent, testified: "I saw no assaults committed; I saw no disturbance" (Abs., p. 25).

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Hoffman, the foreman, said: "All I saw them do was to talk to the men. I saw no assaults; 100 feet was the nearest I ever saw the pickets to the plant" (Abs., p. 36).

Hall, the master mechanic, testified: "I never saw any acts of violence nor any of the assaults" (Abs., p. 40).

Floyd, the chief employment officer, who was stationed at the main gate and had an unobstructed view of the Wabash crossing and beyond, said: "All I saw was the pickets talking to the men, and the men being stopped. I did not see any of the particular attacks mentioned" (Abs., p. 34).

At no time did the pickets, the defendants, nor anyone connected with the Tri-City Central Trades Council enter the plant. The testimony of the officers of the steel plant is that on one occasion they—the pickets—were twnty feet distant (Abs., p. 25). All of the other times they were over at the Wabash depot, 150 yards from the plant (Abs., pp. 34, 36).

Welcher, Hoffman and Hall were continually passing in and out of the plant, and had there been any assaults committed by the pickets would surely have been witnesses thereto. Welcher testified that the defendants had done no direct damage to the plant (Abs., p. 25). But he did say that he had been told that the plant was going to be burnt (Abs., p. 26).

It does not appear of record, but when he was asked who told him, he could not remember. Looking at the plant from the outside it would appear that to burn down such a steel plant would be a most difficult task. It could be blown up with dynamite, but the workingmen affiliated with the Central Trades Council are not dynamiters. That kind of work is peculiarly of the I. W. W. type. With this, unlawful class, those connected with the American Federation of Labor have nothing in common. If there are those connected with the Tri-City Central Trades Council who believe the "strike breakers" to be responsible for the assaults committed, hoping thereby to lay a foundation for the injunction proceedings, the action of Mr. Davis, the general manager, is warrant therefor.

When the Commercial Club had called a joint meeting of representatives of the plant, the Tri-City Central Trades Council, City Officials and officers of the Commercial Club hoping to adjust the differences:

Galloway testified: "I had a conversation with Mr. Davis and when I stated that some of the men they had imported in there as strikebreakers had shot at some of our men, Mr. Davis told me that the only trouble with the men who did the shooting was that they didn't shoot straight enough." Mr. Davis is connected with the foundries and the man that did

the shooting was an employe of the foundries (Abs., p. 45). It would seem such a statement required some kind of an explanation from such official, who was at that very moment sitting in court near counsel. But he did not go on the witness stand.

In the Thomas case (62 Fed. 805), wherein one Phelan was charged with having instigated a boycott against the handling of Pullman cars, the Court, on page 87, said:

> "Now it may be considered in the outset that the employes of the Receiver had the right to organize into or join a union which should take joint action as to their terms of employment. It is of benefit to them and to the public that laborers should unite in their common interest and for lawful purposes. They have labor to sell. If they stand together they are often able, all of them, to command better prices for their labor than when dealing singly with rich employers because the necessities of the single employe may compel him to accept any terms offered."

In the Kemp case (255 Ill. 220), the Court said:

> "Labor unions have long since been recognized by the courts of this country as a legitimate part of the industrial system of the nation. The ultimate purpose of such organization is through combination; to advance the interests of the members."

In the Gray case (91 Minn. 171), the Court said:

> "Labor organizations or unions, are not unlawful, but are legitimate and proper for the advancement of their members."

In the Beaton case (102 Ill. App. 128), the Court said:

> "The right of workingmen to organize and combine for their own protection is no longer an open question."

In the Franklin Union case (220 Ill. 355) and the Barnes case (232 Ill. 425), the Court was inclined to hold a labor union to be a conspiracy, but in the Kemp case (255 Ill. 213) these holdings were repudiated.

On page 405, Justice Carter said:

> "In the last half century the changes in machinery and in social conditions generally have not only greatly affected economic theories, but have required many changes in the law so as to conform to altered social needs. New statutes have been enacted, but independent of any statute the courts have gradually adapted the fundamental principles of the law to changing conditions."

In the Allis-Chalmers case (166 Fed. 49), the Court said:

> "It was shown that the local unions of Milwaukee had a conference and agreed upon a scale of wages, and because they acted as a union it was sought to make it appear they had entered into a conspiracy, but the Court held otherwise."

In the case at bar the workmen of the three cities were represented by the Tri-City Central Trades Council; thirty-seven locals were represented, and these comprised the various crafts. Welcher, the superintendent, testified:

> "We had only called for in round numbers 300 men and had laid off approximately 1,300; 80 or 90 per cent of the employes were old men. I assume these men were members of the various organizations; I can't state definitely as to that" (Abs., p. 41).

He does not say this 80 or 90 per cent were members of the local unions represented in the Tri-City Central Trades Council, but every one who heard him was cognizant that he meant just that. The Tri-City Central Trades Council was a defendant. He knew of the locals comprising it and he knew, furthermore, that it was the organization that by adopting plans of cooperation made it difficult for him to operate his plant.

In some instances efforts are being made to bring about greater co-operation between trades unions and employers' associations.

These employers believe that by treating with union officials they may the better stabilize industry. To be able to agree on a scale of wages for a particular period enables the employer to make contracts. As between a union affiliated with the American Federation of Labor committed to the principle of "Collective Bargaining"—and which has respect for property rights, and an organization such as the I. W. W., which has no regard for property rights and which does not believe that the employer has any rights the employe should respect—these employers have wisely —as we believe—chosen to recognize the former. Working men affiliated with the American Federation of Labor believe that only through organization may the condition of the wage earners be improved. In the event some "arbitrary employer" should reduce the scale of wages and refuse to arbitrate the difference, it is not their policy to commit murder or destroy property. They place pickets near the employer's plant to try and persuade other workingmen from entering, hoping thereby to make the employer see things in a different light. This the Tri-City Central Trades Council did. The injunction prohibiting peaceful picketing was issued on May 20, 1914, and up to this time has been cautiously ob-

served. Not even one contempt case has arisen. The strike called on April 21, 1914, is still on, and the workingmen of the Tri-Cities are as much interested in the final outcome as when the injunction was first issued. If this Court should declare "peaceful picketing" to be unlawful, then the labor union, composed of law-abiding wage earners—such as is the Tri-City Central Trades Council—shall be deprived of its only weapon to combat the "arbitrary employer." No better argument in behalf of organized labor was ever made than the one of John P. Morgan before the Industrial Commission. When asked if $10 per week was enough for a longshoreman with wife and children, he replied, "Yes, if that is all he can get." The question arises, how may he get more other than through organization? If this Court should uphold the District Judge who held the Tri-City Central Trades Council to be an unlawful combination, then every local affiliated with the Tri-City Central Trades Council or the American Federation of Labor—and the Federation itself—will be placed in the category of "outlaw organizations."

If the labor movement—represented by the American Federation of Labor—is thus destroyed, then the most potent force, probably in the country to combat the "Red peril of Bolshivism" shall have been put out of commission.

If the arbitrary employers only know the efforts now being put forth by I. W. W. and the Cummunists and Red Flag Soviets to control local unions, affiliated with the American Federation of Labor—as well as of the Federation itself—we doubt that these would indirectly lend their aid to such lawless class.

While this case was pending on appeal in the United States Circuit Court of Appeals Congress (1916) enacted the Clayton Act, section 6 of which declares "Nothing contained in the Anti-Trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or considered to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." The undisputed evidence shows the Try-City Central Trades Council was organized for "mutual help," has no capital stock and is not conducted for profit.

It was not unlawful for the Central Trades Council to order the strike. After the representatives of the company refused to confer with the committee there was no other alternative. If the testimony of Welcher, the superintendent of the plant, is to be believed,

then 80 or 90 per cent of the men employed in the mill were members of the local organizations (Abs., p. 41), and the testimony of the officers of the Central Trades Council is conclusive that the action of the Council was taken upon request of those employed in the plant. All the Tri-City Central Trades Council sought to do was to compel the management to restore the former scale of wages or submit the wage dispute to arbitration. If assaults were committed those guilty were not acting for or on behalf of the Trades Council. Complainant has said that the Tri-City Central Trades Council did not represent its employes. If it represented 80 or 90 per cent that was the major portion. The superintendent said that 80 or 90 per cent of the 400 or 470, were old men and he believed them to be members of the various organizations (Abs., pp. 25-41). He certainly had no other organization in view other than the locals represented in the Trades Council. These men employed in the mill and the ones who made complaint to the Central Trades Council and asked its cooperation (Abs., pp. 45, 57). In the Allis-Chalmers case (166 Fed. 49), the Court said:

> "Nothing in the record indicates that there was any want of good faith in making the demands or that the strike was undertaken with any purpose other then to enforce them."

In that case all of the molders' unions of Milwaukee had agreed to work together. In the case at bar all of the local unions in the three cities were co-operating.

In the Hannahan case (121 Fed 563), the point was made that officials of the Railroad Brotherhood, who were not employes, had no right to issue a strike order. The Court, however, held otherwise.

In the Thomas case (62 Fed. 818), the question of the right of railroad employes to boycott the handling of Pullman cars was involved. The receiver said his railroad was under contract to handle them. The Court, in passing on this question, said:

> "The distinction between an ordinary lawful and peaceful strike entered upon to obtain concessions in the terms of the strikers', employment and a boycott is not a fanciful one, or one which needs the power of distinction to determine which is which."

The employes of the steel foundries were not under a contract of any kind. They could quit the service any time. In some cases—a strike of railroad employes—the public might be interested, but no public right is involved in this case. The company had the right to close its plant if it chose to do so; and the men had the right to quit.

On page 817 (62 Fed.), the Court said:

> "It may be conceded that the employes of the Receiver had the right to organize into or join a union which should take joint action as to the terms of employment. If they stand together they are often able, all of them, to command better prices for their labor than when dealing singly with rich employers, because the necessities of a single employe may compel him to accept any terms offered."

In Judson on Interstate, on page 116, we find the following:

> "A concerted cessation of employment, as in strikes, results also in interference with interstate commerce and may involve widespread public inconvenience, but that is the incidental result of a lawful right."

The steel plant did suffer inconvenience no doubt, as a result of the strike order, and as a result of the peaceful picketing, because the witnesses said so.

Welcher, the superintendent, testified:

> "The plant is losing money right along. There is no claim we have lost money by what the defendants did, but we have lost money therefrom. Our machinery has gotten in very bad shape, we have been compelled to employ men to operate various machines who were not as

efficient as the men we had prior to April 22" (Abs., p. 25). (April 22 is the day the strike was declared.)

Floyd, chief timekeeper, said:

"When we started our plant on the 6th of April, I had plenty of applicants for such work; from the 24th of April up to the time of issuance of the restraining order the situation changed materially (Abs., p. 34). The rest of the plant cannot operate without the cranemen and other skilled laborers" (Abs., p. 34).

In the Kemp case (255 Ill. 724) the Court said:

"It has been, comparatively, but a short time since it was unlawful for workmen to associate themselves together under such organizations as trade unions * * * such organizations were held to be conspiracies * * * but the right to organize and strike if necessary is now generally recognized."

The claim that the Tri-City Central Trades Council did not represent the workers in the plant is beyond our comprehension.

According to Welsher's testimony, of the 1,300 laid off in November, only about 400 were called for (Abs., p. 41). He said that 80 or 90 per cent were old men and members of the various organizations. If a man is "laid off" that does not signify he has severed his

connection with his employer. It was these employes—the 80 or 90 per cent—who, as members of "various organizations," made complaint to the Tri-City Central Trades Council.

Galloway testified:

"As president of the Central Trades, I first learned of a controversy between wage earners and the foundries from the delegates of the various trades who were refused any wages at that plant and made complaint of the central body that their wages had been reduced from 2 to 9 cents an hour" (Abs., p. 43).

"After the council received complaints about the reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the central body and asked for its co-operation in the matter of arbitration with the foundries. A committee was appointed by the central body to wait upon this corporation to arbitrate the question (Abs., p. 44).

"As chairman, I went in to see Mr. Welcher, and stated the case to him (Abs., p. 44). Mr. Welcher said that he would not meet with a representative of organized labor; that if anybody around the plant had a grievance to come as individuals (Abs., p. 44).

"This was about the 20th or 21st of April. It was reported back to the joint board and a strike was declared on the plant. A committee of the joint board of the Tri-City Central Trades Coun-

cil selected these pickets, rather, they were from the different crafts that were connected with the reduction of wages. The joint board placed pickets down there at the Wabash depot, along the streets leading to the plant, and we sanctioned their action" (Abs., p. 45).

Cavanaugh, secretary of the Tri-City Central Trades Council, testified at the regular meeting on April 15th of the Tri-City Central Trades Council, a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday, the 19th. Ten or eleven trades were represented and we decided to call on the American Steel Foundries and see if we could not have the wages reinstated or arbitrate the matter (Abs., p. 57). I wasn't present at the arbitration planned meeting which was on the 20th of April. At the meeting Wednesday evening the committee reported they failed to reach an agreement and the management said they had nothing to arbitrate (Abs., p. 57).

Cross-Examination.

"On April 15 we had a communication from the unions representing some of the trades working in

the foundries. We had complaints from the men themselves working at the foundry" (Abs., p. 58).

Hartbeck, member of the Blacksmiths' Union, testified: "I have been at meetings of the Central Trades Council and heard it reported about trouble between the complainant and the employes" (Abs., p. 50).

Welcher, the superintendent, stated that "Only two men left our employ in response to the strike order" (Abs., p. 41). And yet he testified: "We ran our plant without any trouble with our men until the morning of the 23rd of April" (Abs., p. 41). "It was impossible to keep ourselves properly employed with the right class of labor to operate the plant" (Abs., p. 41). "Prior to the calling of the strike we had no trouble in securing labor at the plant" (Abs., p. 23). "We have been compelled to employ men to operate various machines who were not as efficient as men we had there prior to April 22" (Abs., p. 25). "We had no trouble with our class of men from April 6th to April 22d" (Abs., p. 25).

Lamb, business agent for the machinists, testified: "Prior to the strike some of the men in my organization were employed at the plant. We called them out after the strike was declared" (Abs., p. 48).

Cross-examination: "On the 22d or 23d of April, I think five of our machinists were in the plant. One

by name of Missel, who quit of his own volition, and Tom Churchill and Hamp and Drogg. Drogg was what we called a semi-machinist" (Abs., p. 48).

Hartbeck, business agent Blacksmiths' Union (Abs., p. 50), testified: "When the reduction of wages took effect I was ordered by my superior of our district board to go over there and to have men over there that would go to work to try and have them come out if they could under reduction of wages. Probably some of our men would go in unbeknowing to the trouble. At the time I went over there none of our men were at work in the plant because they had been sent for" (Abs., p. 51).

Cook testified (Abs., p. 56): "I am an electrician and belong to none of the unions. Worked at the plant about three weeks after it started up. I quit because they cut my wages" (Abs., p. 56). "Floyd said I was going to get 26 cents an hour and when payday came I got 23. Worked four or five days longer and quit because they said there was a strike on" (Abs., p. 56).

Holmes: "I am an electrician. I worked there when the plant closed in November; didn't go back to work in April on account of the reduction" (Abs., p. 55).

Churchill: "I am a machinist. Was working for the plant when it closed down in November and went back to work when they opened, but got an increase over the new men they had, but still it was a reduction" (Abs., p. 52). "I quit because these fellows asked me to go out" (Abs., p. 53).

Fortner (one of complainant's witnesses [Abs., p. 42]) testified: "I worked at the foundry before they closed down in November, running a crane. They resumed work on April 6 and reduced my wages. I worked there from April 6th to April 25th. Went in and out of plant every day and was not molested. It was either Ishman, Lamb or Holmes that told me there was a strike on and I had better quit" (Abs., p. 42). "I don't belong to one of those labor unions. I did belong to the cranemen's local, but I wasn't working for a couple of months before this trouble and I didn't pay my dues" (Abs., p. 42).

Floyd: "The workmen affected by this picketing are the machinists, cranemen and skilled labor. The rest of the plant cannot operate without the cranemen and these skilled laborers" (Abs., p. 34).

While Welcher's testimony showed that 80 or 90 per cent of the 300 men who had resumed work were members of the various locals affiliated with the Tri-City Central Trades Council, our contention is that

none of the remaining 1,300 had severed their connection with the company. These could have returned, but did not do so, because of the reduction of wages.

To say that the Tri-City Central Trades Council has no right to intercede in behalf of the employes of the Mill Company is absurd. The principle of "collective bargaining" is now well established throughout the land and it is the only effective means whereby workingmen may secure concessions through lawful methods. Just how many employes connected with the various locals affiliated with the Tri-City Central Trades Council were working there at the time, or before, we cannot say, but the testimony of the witnesses would indicate quite a number. Welcher, the superintendent, is probably correct when he said: "We only called in round numbers for 300 men and laid off approximately 1,300 men; 80 or 90 per cent of the employes were old men. I assume these men were members of various organizations" (Abs., p. 41). Surely he had no other organization in mind other that the labor organizations affiliated with the Tri-City Central Trades Council. His statement supports that of Galloway, president, and Cavanaugh, secretary, officers of the Central Trades Council, who testified that the employes of the Mill Company had suggested to the Tri-City Central Trades Council that it take up the matter (Abs., pp. 43, 57).

It is just as reasonable that the Tri-City Central Trades Council represent the workers employed, or who had been employed, at the mill as it is for counsel to appear representing the Mill Company. If each employe would have to make the individual claim and contest, why not each stockholder of the Mill Company make a separate defense or contest? Instead of doing this, the stockholders combine and choose officers to represent them. Counsel for the Mill Company represents the stockholders because the officers of the combination retained him to do so. Counsel for the respondents represents the workers in such mill because the officers of the Tri-City Central Trades Council retained him to do so. If stockholders may combine—and we are not saying they should not—why not grant workingmen a like privilege?

The whole trouble in this case arose because of the refusal of the Company to deal with the committee chosen. When the committee called at the plant for an interview—at that time having in mind arbitration—Mr. Welcher, the superintendent, said: "Would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievances to come in as individuals" (Abs., p. 44). Every man of experience knows that when the employes of any concern seek to go it alone, as individuals, they never get anywhere. Without an organization they are an impotent force. Imagine the

employes appointing a committee to call on the manager because of a grievance about pay or hours. Before the committee could secure an audience they would have been discharged. Having been dismissed from the service, they would not be "our employes." This saying, "Merely deal with our employes," is the method adopted by the employer who does not think an employe has any rights or privileges that he should observe. It has been demonstrated that officers of an organization—none of whom are employed in the particular plant—are in a better position to represent the workers because they have nothing to fear.

When the officers and committee of the Tri-City Central Trades Council met in conference with representatives of the Commercial Club the claim was not made that the committee did not represent the employes in the mill. Nor does it appear that up to that time there had been any violence. It was at that time Galloway spoke to Mr. Davis (the general manager) about one of the strikebreakers trying to shoot one of their men, and Mr. Davis replied: "The only trouble with the man that done the shooting was that he didn't shoot straight enough" (Abs., p. 45).

At a time when the law-abiding workingmen of the country affiliated with the American Federation of Labor—as is the Tri-City Central Trades Council—are striving their utmost to maintain the principle of collective bargaining, and at the same time combatting

the evil tendencies of the Bolsheviki-Soviet system which the I. W. W. and other lawless organizations are fostering, it illy becomes a great concern like this mill company to indirectly aid them. Should this Court decide the issues involved as complainant's counsel would have it decided, then every labor union affiliated with the Central Trades Council—as well as the Tri-City Central Trades Council itself—and every organization affiliated with the American Federation of Labor would be declared outlaws. Likewise, the sixteen railroad brotherhoods and the Miners Union would come under the lawless ban. They may not realize it, but no greater calamity could befall the employer class in this country. Only recently in Italy a controversy arose over working conditions and the employers closed the mills. The employes took charge of the mills and plants. When the authorities sought to dispossess them through the military power they found the military allied with the workers.

As long as the American employer recognizes the principle of "collective bargaining"—the cardinal principle of the American Federation of Labor—working men in America will decry the Russian Bolsheviki, Soviet, I. W. W. theories. But should this feature be abandoned and labor unions made outlaws then no man may predict what the future may bring forth.

Employer Has No Property Right in His Employe.

When this case was tried in the U. S. District Court we contended that the complainant had no property right in its employes and therefore should not be permitted to maintain its said cause and that it was only upon the theory of such property right the injunction prayed for against the defendants might be awarded. On appeal to the U. S. Circuit Court of Appeals, page 13 of our brief, it shows that we made the same contention. We believe that the case of Northern Pacific R. R. v. Whalen, 149 U. S. 157-62, is controlling on that point. In that case it appears the railroad company was constructing an extension and had numerous laborers in its employ. A party by the name of Whalen opened a saloon and as a result the workingmen patronized his place, became intoxicated and they were rendered unable to perform the service required.

III.

When the strike was declared, the Central Trades Council, directed that picketing be done. This meant the placing of workingmen on the street near the plant to notify any workmen going toward the plant that the wages had been reduced and to try and persuade such ones not to enter or work at the plant until the company would restore the former scale of wages or agree to arbitrate the differences.

No one connected with the Central Trades authorized anything other than peaceful picketing and there was peaceful picketing because the officials of the steel plant said so.

Welcher testified:

> "I never saw any assaults nor any disturbance" (Abs., p. 25).

Floyd said:

> "I didn't see any of the particular attacks, that are mentioned. All I saw was the pickets talking to the men and the men being stopped. The pickets were stationed between the Wabash depot and the plant" (Abs., p. 34).

Hoffman testified:

> "I have seen these men picketing mainly around the Wabash depot, 150 yards from the plant; on one occasion I saw them 100 feet from the plant (Abs., p. 45); 100 feet is the nearest I ever saw pickets to the plant (Abs., p. 45); all I saw them do was to talk to the men; I saw no assaults" (Abs., p. 36).

Hall said:

> "I never saw any acts of violence nor any of the assaults" (Abs., p. 40).

These officials passed in and out of the plant continually and it stands to reason that if there had been any assaults committed in proximity to the plant these officials would have known about it. In every case the alleged assaults took place some distance from the plant. Hedstrum testified he had been assaulted at the Wabash Station (Abs., p. 27) 150 yards from the plant (Abs., p. 34). Crawford said he was assaulted beyond the Wabash depot (Abs., p. 28). Quinn said he was beyond the depot when assaulted (Abs., p. 29). Melton was in a lunch room across the track when threatened (Abs., p. 30). Francis saw an assault committed near the depot (Abs., p. 31). Bell said he was struck while up near the stamping works (Abs., p. 32).

Floyd saw a basket jerked from a negro over at the Wabash station (Abs., p. 34). Crabtree said some one struck him with fist on Neidringhaus avenue, near Wabash depot (Abs., p. 35). Cantrell testified he was assaulted one square from Wabash depot (Abs., p. 35). Knott said some one threatened him with a knife at Wabash depot (Abs., p. 37). Hillman was six blocks from plant when threatened (Abs., p. 37). Gordon said some one kicked him at the Wabash depot (Abs., p. 38). Stark was struck with a rock after passing Wabash depot going to the street car (Abs., p. 42).

On cross-examination Headstrum said:

> "I didn't recognize any of the men who assaulted me" (Abs., p. 28).

Crawford testified:

> "The only man that I recognized in the crowd was Ishmon Dangles" (Abs., p. 35). (Dangles is not a party to the suit, nor was he present at the hearing.)

Quinn testified:

> "After the fight was over, Hartbeck was the only one I recognized" (Abs., p. 30).

Hartbeck testified:

> "That he did not threaten or assault anyone; I never used any violence of any kind, I tried to persuade men not to work here under the reduction of wages" (Abs., p. 50).

Melton on cross-examination said:

> "I don't know who struck me, it was after dark" (Abs., p. 31).

Francis said among others he saw at the Wabash depot on the 13th (May) was Galloway (Abs., p. 32). Galloway testified he was not there on the 13th (Abs., p. 45). Testified further:

"I did not strike any of the strikebreakers, or other employes leaving the plant, on any other day other than the 13th" (Abs., p. 45).

Bell said the only one he knew was McKenny (Abs., p. 33). McKenny testified the only man he struck was the one who called him a G—d d—m s— of b— (Abs., p. 51).

Whether justified or not, those charged with doing picket duty feel that "strike breakers" were responsible for the assaults committed. It is evident those connected with the Central Trades Council were not looking for any such trouble. The first indication that anything of the kind was in contemplation was when the strike breakers tried to shoot one of the pickets. The president of the council called the general manager's attention to this at the conference called by the Commercial Club, and the only satisfaction he got was: "The only trouble with the man that done the shooting was that he didn't shoot straight enough" (Abs., p. 45). The Mayor of Granite City was present and heard Mr. Davis say this (Abs., p. 47). Lamb, an official of the Machinists' Union, was present and heard the statement (Abs., p. 48). And the strange thing is that Mr. Davis, though in court, did not go on the stand to explain.

In the Goldfield Con. Mine case, 159 Fed. 519, the Court said:

> "When free from contract obligations workmen have a legal right, singly, collectively, or as a union, to strike, and having such right they have the further right to use all lawful means to make the strike effective."

We contend that the Tri-City Central Trades Council was strictly within its rights in doing peaceful picketing. Lawless acts—if any were committed—we have not sought to defend. In the Kelly case (187 Fed. 415) the United States Court of Appeals held "union or other laborers have the right to quit the service, and they may by peaceable means persuade others to quit the service" (p. 417).

In the Allis-Chalmers case (166 Fed. 45), the Court said:

> "An injunction against strikers should not prevent either persuasion or picketing as such."

In the Keegan case (100 Fed. 149), the Court said:

> "One of the forms of persuasion which, under proper circumstances the law recognizes as permissible, is picketing"; "that is to say, a detachment of men in suitable places for the purpose of coming into personal relations with the new

> workmen, in order, if possible, to induce them, by means of peaceful argument, to leave the places which they have taken, for such mutual and proper reasons as may appeal to men of such circumstances."

In the Young case (288 Ill. App. 208), the prosecution sought to have the jury instructed "that intimidation consists of following one, spying after him, stopping and threatening him, or assuming a threatening attitude toward him." But the Court replied, saying:

> "Such an erroneous interpretation would deprive a citizen of the right to argue and persuade his fellow employes to quit."

In the Franklin Union case, 220 Ill. 355, an injunction was granted holding concerted action of the union to be a conspiracy. Had this come up on a direct hearing instead of on a contempt proceeding, it is a question whether such holding would have been made. The Court, however, divided. Justice Boggs, who wrote the minority opinion, on page 385 said:

> "The employers of the printers had organized an association in Chicago to enable them to act as an organized body and the law wisely permits the workingmen to form organizations."

On page 388 he said:

> "It is argued by appellee, however, that persuasion necessarily leads to disagreements, quarrels, force and violence, and, therefore, should be enjoined. * * * The question is not whether persuasion leads to acts of lawlessness, but whether persuasion itself is unlawful. A man should not be enjoined from doing an act merely because that act may lead to the doing of some wrongful act. If such an argument be followed to its logical conclusion, it would be proper to enjoin the strikers from leaving their homes, while the strike continues, because if they are kept at home no violent encounters will take place between them and those who are in the employment in question, while if they are permitted to go upon the streets affrays may occur. The law will be satisfied if the striker be punished when he does a wrongful act. It is not just to punish him for doing such an act, rightful in itself, merely because that act may lead to something not intended."

In the Barnes case (232 Ill. 425) the Court indicated that for wage earners to combine or do peaceful picketing would be wrong. Had this question come up on a direct proceeding instead of on a contempt issue the decision might have been otherwise. Be that as it may, the Court divided on the question. Justice Farmer, who wrote the dissenting opinion, concurred in by Justice Scott, declared that the ma-

jority holding was contrary to the spirit of the time (p. 41).

In the Kemp case (255 Ill. 213) the Court went so far as to hold that it was not a conspiracy because men formed a union and agreed to not work with non-union men. In the case at bar the Trades Council made no such demand. Continuing, the Court, on page 220, said:

> "That the purpose of organizing labor unions was to gain strength, and that the officials of the labor unions were merely the agents of those affected. Labor unions have long since been recognized by the courts of this country as a legitimate part of the industrial system of the nation. The ultimate purpose of such organization is through combination to advance the interests of the members by obtaining for them adequate compensation for their labor, and it has been frequently stated by the American courts that the fact that this purpose is sought to be obtained through combination, or concerted action, does not render the means unlawful" (p. 221).

Continuing, the Court said:

> "Appellees rely upon the Franklin Union case, 220 Ill. 355, and the Barnes case, 232 Ill. 424. In these cases the employes had gone out on strike and injunctions had been secured. The injunctions had been violated—while the matters in-

volved in each case grew out of acts following a strike of union employes, the question of right to strike was not involved" (p. 232). "The case at bar partakes of none of the elements of a boycott. The primary object of a boycott being to inflict injury upon another, has been held to be illegal. Here the primary object of the combination is to further the interests of the organization and improve the condition of its members. Whatever injury may follow to others is merely incidental" (pp. 234-35).

Counsel for the steel plant has cited the Franklin Union and Barnes cases, but if we are any judge the Court in the Kemp case (255 Ill.) has refused to follow any ruling therein made. The Hitchman case (Hitchman etc. v. Mitchell, 245 U. S. 229) is no criterion; in that case the employes of the mining company had signed contracts not to join the union. The officials of the Miners' Union, the Court says, knew this, and tried to have them violate it. In the case at bar not even one witness said anything about a contract.

In the Duplex case, 254 U. S. 443, neither the question of a combination nor peaceful picketing was considered. The only question involved was the right to boycott. In the case at bar not even once on the hearing was the word "boycott" used.

In the Allis-Chalmers case (166 Fed. 45) the United States Court of Appeals of this, the Seventh Circuit,

upheld peaceful picketing. It did so again when the case at bar was pending therein. In our judgment, it is this Court that should be sustained.

While pending in the United States Court of Appeals, Congress passed the Clayton Act, Section 20, which specifically mentions peaceful picketing. We believe this Court should hold peaceful picketing to be lawful, without regard to the Clayton Act. If the Clayton Act is retroactive, as we believe it to be, then such act will, no doubt, prove conclusive.

V.

When a District Court goes to the extent of enjoining workingmen—whether engaged in picketing or not—from making free use of the streets of a city, surely such persons should be entitled to relief through some higher tribunal. The decree prohibits the Tri-City Central Council and the other defendants from "assembling, loitering or congregating about or in proximity of said plant or factory—for the purpose of doing or aiding or encouraging others in doing any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets and from doing any acts or things whatever in furtherance of any conspiracy or combination among

them." All this in connection with its "business" or its "foundries in the City of Granite City **or elsewhere.**" Probably every street in Granite City leads to the complainant's steel mill, hence every person who is attached to the Central Trades Council is obliged to keep off the streets, but that is not all. Complainant may have a "business" other than the foundry, these parties must ascertain the location of such "business" and keep off any street leading thereto—not satisfied with mentioning "factory and business," they have incorporated the words, "or elsewhere." Under this decree the defendants could be charged with contempt should such ones assemble before complainant's plant in Gary, Ind., or before its place of business in Chicago.

In the bill (Abs., p. 4) complainant complained because hand bills were distributed calling attention of workingmen that there was a strike on. No mention, however, is made of this in the final decree.

In the Watson case (168 Mo. 134) a controversy arose over wages, and a strike ensued. The Court said:

> "In this case the question of wages was involved and because of a refusal to work unless certain demands were complied with an injunction was sought. A circular was issued, which complainant considered an effort to boycott."

On page 144 the Court said:

> "Section 14 of our Bill of Rights declares 'No law shall be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatsoever he will, on any subject, being responsible for all abuse of that liberty.' The evident idea of that section is **penalty** or **punishment** and not **prevention**. Because if prevention exists, then no opportunity can possibly arise for one becoming responsible by saying, writing or publishing whatever he will on any subject. The two ideas, the one of absolute freedom to say, write or publish whatever he will on any subject, coupled with responsibility therefor, and the other idea of preventing any such free speech, free writing or free publication, cannot co-exist."

In that case it was sought to show the injunction should be issued because the persons sought to be restrained were financially irresponsible; but the Court said:

> "This Constitution is no respecter of persons; the poor man should not be enjoined more readily than the most wealthy man in the community."

Today there is a tendency to deride organizations of workmen, and yet there is no movement which has done more for the uplift and the betterment of mankind. The trades movement means fraternity, the

abolition of the spirit of hate and bigotry, develops the manly spirit in man, makes him more independent, establishes the principles of rights and abolishes the system of wrongs, makes the workshop or mine a safer place to work, fosters education, and uproots ignorance, increases wages and controls the length of the work days; develops manhood and opposes tyranny; induces liberality and reduces prejudices; makes labor free and balks the plans of those who would create involuntary servitude. The whole tendency of the trades movement is designed to make tomorrow a brighter and better day than today.

In the case at bar no effort was made to compel the Mill Company to employ none other than those attached to the unions. Any improvement in conditions would have been enjoyed by all workingmen in such plant, union and non-union alike. Any scale of wages adopted would necessarily have to apply to all.

VI.

This we covered in point IV.

VII.

It is our contention that in this case no injunction should have been issued because no property right was involved. Welcher, the superintendent, testified: "The defendants have done no direct damage to the

plant" (Abs., p. 26). If the plant lost money, it was because the management must have known there would be a shortage of workmen. Welcher said: "Our machinery has gotten in very bad shape; we are compelled to employ men who are not efficient" (Abs., p. 25). Hence, rather than restore the November scale of wages and procure efficient help, he chose to hire inefficient help at the reduced scale. Rather than submit the wage dispute to arbitration, thus bringing into the plant the old and experienced employes, he chose to say at the conference arranged by the Commercial Club: "We have no arbitration offer to make to these laboring men" (Abs., p. 41).

In the Whalen case (149 U. S. 157), the Railroad Company was building an extension and had a thousand men in its employ. Whalen ran a saloon and the workmen drank liquor, and the company sought an injunction to prevent him from operating the saloon and selling liquor on the ground the employes became drunk and were unable to render efficient service. The Court, on page 162, disposed of the case by saying:

> "No employer has such a property in his workmen, or in their services, that he can, under the ordinary jurisdiction of a court of chancery, maintain a suit, as for a nuisance, against the keeper of a house at which they voluntarily buy intoxicating liquors and thereby get so drunk as to be unfit for work."

On page 163 the Court said:

> "As a corporation cannot be said to have life or health or senses, the only ground on which it can obtain either damages or an injunction, under these provisions, is injury to its property."

In the case at bar complainanant would have it appear that it has a property right in its workmen. If they do not so claim, then of what concern is it that an employe gets into a controversy with another outside and some distance from the plant?

While this case was pending on appeal in the U. S. Circuit Court of Appeals, Congress (1916) passed what is known as the Clayton Act, section 6 of which provides:

> "That the labor of a human being is not a commodity or article of commerce."

XII.

There have been "dragnet decrees" issued heretofore, but no decree ever issued, we believe, ever included so much and was more ambiguous (Abs., p. 66). It begins by assuming that the officers and agents of the Tri-City Central Trades Council and other defendants have combined—they are enjoined from in any way or manner whatsoever—by use of persuasion—from

interfering with, hindering, obstructing or stopping any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City—or elsewhere; or from interfering by persuasion—in any manner with any person desirous to be employed by said steel foundries; and from inducing or attempting to compel or induce by persuasion any of the employes of said foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employes of said foundries; and from preventing any person by persuasion from entering into the employ of said foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of said plant for the purpose of doing, or aid or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of complainant or on the streets leading to the said premises any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them; from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid. What conspiracy or combination had counsel who proposed the decree in view?

proposed

In the Laurie case (9 Paiges N. Y. 234), after securing a divorce the husband was enjoined from "annoying, following, harming or offering any personal violence to the wife or children." On appeal from such decree the Court said: "As the defendant is bound to obey the process of the Court at his peril, language of the injunction should in all cases be so clear and explicit that an unlearned man can understand its meaning without the necessity of employing counsel. And the language of the writ should at the same time be so restricted as not to deprive him of any rights which the case made by the bill does not require that he should be restrained from exercising." The decree in the case at bar prohibits "picketing or maintaining pickets at or near the premises of complainant or on the streets leading to the premises. Granite City has a population of probably 30,000. Suppose some member of the Trades Council, two miles distant from the plant, was to speak to a strike breaker about working at the plant. "In any manner whatsoever" would cover his case, and he could be cited for contempt. Suppose this took place in St. Louis or Chicago; "or elsewhere" would apply. Then, again, should some members of the Trades Council meet on one of the streets of Granite City and stop to greet each other, the "assembling, loitering or congregating" could be

applied to them. In the Avery case (10 La. Ann. 127) the Court dissolved an injunction, saying:

"It would be a snare for the defendant."

The injunction issued in the case at bar is the worst kind of snare.

In the Swift case (196 U. S. 375) an injunction had been issued restraining the company from an alleged violation of the Sherman Anti-Trust Act. On appeal the Supreme Court struck out the words, "against any other method or device," giving as a reason "that it was bound by the first principle of justice not to sanction a degree so vague as to put the whole conduct of defendants' business at the peril of a summons of contempt." In the case at bar the liberty of approximately 5,000 men connected with the Central Trades Council has been subject to the peril of a summons of contempt. Speaking further, the Court, on page 401, said:

> "The general words of the injunction, 'or by any other method or device,' and the word 'combination' should be stricken out. The defendants ought to be informed as accurately as the case permits what they are forbidden to do."

In the Sanders case (158 Fed. 132) where the question of mining was involved, the Court said:

> "The writ as a general rule ought to contain a concise description of the particular acts or things in respect to which the party is enjoined, that there may be no misapprehension on the subject."

In 166 Fed. 46 the Court modified the decree by striking out the words "persuasion" and "persuading." In the case at bar practically everything the defendants are enjoined from doing should be stricken out. But to compel the defendants to pay the costs for correcting the decree would be unjust. When this case was in the U. S. Circuit Court of Appeals the final decree was ordered modified and the case reversed (Abs., p. 87).

XIV.

After the final decree had been approved in the District Court at Springfield, and after an appeal had been taken, and such appeal was pending in the United States Circuit Court of Appeals, Congress did, on October 15, 1916, enact what is known as the Clayton Act. While reference to such act was made on page 27 of defendant's brief filed in said Court of Appeals nothing appertaining thereto appears in the opinion

filed by said Court (Abs., p. 87). The issues involved having been decided favorably to appellants (respondents in this court), we have no complaint to make in this regard. We believe, nevertheless, that the Clayton Act is retroactive and might well be applied to the issues involved.

The excerpts of the law which we believe will govern in this cause are:

> "Section 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."
>
> "Section 20. That No Restraining Order, Etc. —And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising or persuading others by peaceful and lawful means so to do, or from paying or giving to or

withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be a violation of any law of the United States."

As to whether or not a statute is to take effect immediately or at a certain specified time, the intention of the act itself must determine. At the conclusion of the act we find:

"Section 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command, entered in any suit or action brought or prosecuted in the name of, or in behalf of, the United States, but the same, and in all other cases of contempt not specifically embraced within Section 21 of the Act, may be punished in conformity to the usages at law and in equity now prevailing.

"Section 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution of the same act

or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this act."

It is obvious that had the lawmakers wished the act to exempt any injunction proceeding pending they would have done so. They did except contempt proceedings pending, and that shows it was not their intention to exempt the ordinary injunction proceedings or they would have said so.

Hence the Clayton Act applies:

"Contempt," as defined in Volume IX of Cyc, means "disobedience to the Court." And in the case at bar there was no disobedience of any court order

"A contempt of court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof."

Vol. IX of Cyc, page 5.

In Cyc, Vol. XXXVI, under the heading of "Statutes," may be found:

Exceptions and Savings Clauses.

An exception differs from a proviso in that the exception exempts something absolutely from the operation of the statute by express words in the enacting clause, while a proviso follows the enacting clause and operates to defeat its operation conditionally.

A savings clause contains an exception of special things out of the general things mentioned in the statute, and its most common use is in repealing statutes for the purpose of saving from their operation rights accrued, duties imposed, penalties incurred, and proceedings commenced (p. 1163).

The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the Legislature (p. 1106).

A statute is prospective only which expressely declares that it is not retroactive, which by its terms is to apply to actions or to things done "hereafter" or "thereafter" or is to take effect at a future date, or which contains, in the enacting clause, the phrase, "from and after the passing of this act," in which expressly excepts rights acquired prior to the passage of the act, or "actions now pending," or "any suit or proceeding had or commenced" before the passage of the act (p. 1204).

It is the rule for which there is an abundance of authority that the mere fact that a certain construction of a statute will cause inconvenience, or failure of justice, will not affect the judicial determination of a case involving its construction (p. 1111).

Every statute must be construed with reference to the object intended to be accomplished (p. 1110).

Vol. 25 of Cyc.

When the statute declares generally that no action, or no action of a certain class, shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would naturally make it to apply to past actions as well as to those arising in the future (p. 994).

Except in cases of direct technical trusts, the statute of limitation operates as a bar, in equity as well as in law (p. 997).

In Volume 12, Am. & E. of Law, page 527, we find:

> "The enactment of expost facto laws either by Congress or the legislature of a state is expressly prohibited by the Federal Constitution,"

and in defining what an expost facto law is, on page 525, says:

> "An expost facto law is one which in its operation makes that criminal or penal which was not so at the time the action was performed."

And in Volume 24, page 577, we find:

> "An act retroactive in effect where there are no vested rights involved is not contrary to the principles of jurisprudence."

We contend that in the case at bar there are no vested rights. As to whether or not an injunction

—should have been granted in this case is a matter of doubt. To remove that doubt Congress enacted the Clayton Act. In Vol. 26, Am. & Eng. Enc. of Law, page 529, we find:

> "A declaratory statute is one which is passed in order to put an end to a doubt as to what is the common law, or the meaning of another statute, and which declares what it is and ever has been."

In the case of City of Cairo v. Cairo & V. R. R., a controversy arose over the use of the streets. An ordinance having been passed granting the railroad certain rights and privileges, the railroad claimed that the city could not by a subsequent ordinance restrict it in the use of such streets, but the Court said the city could do so.

In the case of Sturgis v. Carter, 114 U. S. 511, it would seem the State of Ohio made a change in its tax laws. The County Recorder, in order to determine whether or not a certain party had paid the rightful amount of taxes, sought to go back a period of four years. The contention was that the act was retroactive and contrary to the Constitution. The Court, however, held the County Recorder could do just what he was doing.

In the case of Wrightman v. Boone County, 88 Fed. 435, the question arose as to whether or not the act

should or should not have a retroactive effect. The Court, in passing on the question, said:

> "The intention of the Legislature in enacting a limitation law should apply, and in this case an examination of the law in question has left no doubt in our minds that the Legislature of Arkansas intended that this act should affect judgments rendered before as well as those rendered after its passage."

The Clayton Act has been passed upon in the Duplex case (252 Fed. 722) and in the Kinloch case (265 Fed. 312).

We feel that inasmuch as Congress enacted the law in question to settle the questions involved, the law was retroactive to the extent of applying to an injunction proceeding pending at the time, but not to a pending contempt proceeding.

What we wish this Court to say is, that an organization of working men, such as is the Tri-City Central Trades Council, is not an unlawful combination, and that in the event of a strike or lockout, workmen have the right to do peaceful picketing.

We submit that, inasmuch as the U. S. Circuit Court of Appeals has decided the issues involved, in accordance with justice and equity, such decision should stand as the judgment of this Court and the ruling made therein should be affirmed.

FRANK C. SMITH,
Solicitor for Respondent.

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GENERAL NO. 25809. TERM NO. 8.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL *et al.*,
Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh District.

REVISED BRIEF AND ARGUMENT FOR PETITIONER

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

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—oOo—

Statement of the Case.

—o—

The American Steel Foundries is a corporation organized under the laws of the State of New Jersey and authorized to transact business in the State of Illinois. For many years it has operated a plant at Granite City, Illinois. The plat introduced in evidence (Printed Rec., 22) shows that its property is fenced and covers in the neighborhood of twenty acres of ground. Within the enclosure are some eight or nine buildings of vari-

ous dimensions about 650 by 412 feet. The next largest building is approximately 225 feet by 425 feet. These buildings cover substantially one-third of the premises, are of various construction, some combustible and some non-combustible. The frame work of the buildings is wood in a great many cases and one is an entire wood building. (Printed Rec., 25-26.)

In normal times the plant employs about 1,600 men. It was operated as an "open shop," employing both union and non-union labor without discrimination. In November, 1913, because of depressed condition of business the plant closed and all employees were laid off indefinitely. On April 1, 1914, the petitioner undertook a partial resumption of operations at this plant, and a few men were employed at the plant to get it in running order. Prior to April 6, 1914, notices were posted about the works inviting workmen at a reduced scale of wages, in some departments from two to nine cents per hour, and in a good half of the departments without any reduction, and on April 6th the plant opened on a twenty-five per cent basis of its rate of capacity, employing from 300 to 375 men. On the resumption of work, such men were hired as applied for employment at the reduced wage, and about eighty or ninety per cent of the employees were men who had been in the employ of the plant when it closed the preceding November. (Printed Rec., 24, 25 and 41.) *From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to the petitioner from any of the employees with regard to wages.* (Printed Rec., pp. 25 and 41.)

About the 20th day of April, 1914, the Tri-City Central Trades Council sent a committee headed by Earl Galloway, its president, to the plant of petitioner to remonstrate with the management against the scale of wages then being paid. Upon their application for admission at the gate of the plant, one of the members, the president, Earl Galloway, was admitted to the office of Mr. Walcher, the manager of petitioner. *Mr. Walcher inquired of Galloway if any of the committee was an employee of the Company or represented any of the employees of the Company, to which Mr. Galloway replied that they did not.* Mr. Walcher stated that the visit of this committee was rather peculiar; *that he had never heard of any complaint from any of his employees, and was very much surprised.* He informed Mr. Galloway that they could have no dealings with outside committees, that they ran an open shop, that they did not recognize organized labor and merely dealt with their employees, and stated further that if any of the employees had any complaint to make in regard to wages or working conditions that he was willing to listen to them as often as may be necessary, and further stated that the Company ran an open shop for the last ten years, had never recognized labor unions and refused to deal with Galloway because he was representing labor organizations. (Printed Rec., 25.)

The Tri-City Central Trades Council is an organization composed of six delegates from local organizations, which form a central body. There are 37 affiliated bodies, composed of the building trades, carpenters, painters, plumbers, building laborers, plasterers, lathers, moulders, electricians, machinists, mill men, barbers, bar tenders,

clerks and various other trades. Each organization is entitled to six delegates. Earl Galloway, the president, testified that the object of the Council is to "better the condition of the working classes; make conditions so that they can receive more of the wealth they produce and better working conditions in general, and that his membership in the Council is by virtue of being a member of the Plumber's Union." (Printed Rec., 43.)

Promptly after the interview between Galloway and Walcher the manager of the petitioner, the respondents entered upon a conspiracy to force the petitioner to either operate its plants upon such terms as the respondent, the Tri-City Central Trades Council, should dictate or to close its plant.

In pursuance of such conspiracy, about the 22nd of April the Tri-City Central Trades Council declared a strike at the Plant, and circulated hand bills calling upon workmen and all labor to stay away from the plant as a strike was on. (Printed Rec., 43-44-45.)

The hand bill is as follows:

"UNION MEN
AND ALL LABOR
STAY AWAY
FROM THE
AMERICAN STEEL FOUNDRY
GRANITE CITY, ILL.
ALL TRADES ARE ON STRIKE.

For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.

By Order of Ways and Means.

Committee of Tri-City Central
Trades Council.

Endorsed by Tri-City Central Trades Council." (Printed Rec., 24.)

In response to this action but two men (Printed Rec., 41), Isaac Cook and Tom Churchill (of the 375 men employed) left their work (Printed Rec., 24) and these men left without even making a complaint to the manager (Printed Rec., 24), and left only because the strike was on and they were ordered out by the respondent, Tri-City Central Trades Council (Printed Rec., 53 and 56).

The "strike" of the Tri-City Central Trades Council having brought out only those two men, the Tri-City Central Trades Council, in furtherance of its conspiracy, proceeded on April 24, 1914, to place a body of pickets about the plant. These pickets were in a number of groups, usually consisting of three or four men, up to eight or ten men, in each group. (Printed Rec., 26.) This picketing failing to win the employees of the petitioner, the respondents to further carry out the unlawful conspiracy to force out the petitioner's men and close down its plant, entered upon a persistent course of intimidation and assaults upon the petitioner's employees, and threatened to destroy the property if necessary to accomplish their end. (Printed Rec., 24.) The assaults were numerous, were wanting in provocation and were brutal, and finally culminated in a general riot brought on by about 200 men, consisting of the pickets placed around petitioner's plant and those associated with them, and among whom were

recognized Earl Galloway, the president of the Council, and others of the respondents. (Printed Rec., 29.)

Written application for protection was made by the petitioner to the Mayor of the City. (Printed Rec., 24.) The Mayor promised protection, but failed to furnish it. (Printed Rec., 47.) The Mayor was a witness on behalf of the respondent Trades Council, and testified that he was a member of the Socialist party, and elected on that ticket as Mayor of the city; that prior to his election he was a steel worker in a steel mill for about ten years, and at the present time held an honorary membership in the Amalgamated Iron, Steel and Tin Workers, and that his sympathies were with the respondents. (Printed Rec., 47.) Application for protection was also made by the petitioner to the Sheriff of the County (Printed Rec., 24); the Sheriff promised to investigate, but neither offered nor gave protection. (Printed Rec., 49.)

On May 18th, 1914, the petitioner's bill of complaint was filed in the United States District Court for the Southern District of Illinois, and application made for a restraining order. (Printed Rec., 2, 9.)

The bill stated, among other things, that the respondents combined and conspired to prevent petitioner from employing skilled laborers at its plant, and that such skilled laborers and petitioner had agreed upon terms of employment mutually agreeable and satisfactory. That in carrying out such combinations and conspiracy the respondents began picketing the plant of the petitioner on or about April 23rd, 1914, that the respondents on April 23rd and since then had

caused various numbers of men or pickets, namely 5 to 30, to be stationed adjacent to the main gates of the petitioner's plant, which pickets, from that time until the time of the filing of the bill, had threatened to assault, mistreat and injure various of the employees of the petitioner unless said employees ceased from their work, and caused a number of the petitioner's employees to be assaulted by the pickets, to be knocked down and kicked, and rendered insensible, and threatened to kill the employees who continued to work at the plant of the petitioner. That on the 13th day of May, 1914, the respondents in combination caused a gang of men in excess of 50 in number to assault nine of the employees of the petitioner as they were leaving the plant, each of which said employees so assaulted was satisfied and contented with his employment and with the petitioner, and that no dispute of any kind existed between the employees and the petitioner. That the Tri-City Central Trades Council had caused to be circulated generally throughout the said City of Granite City, hand bills and posters, as aforesaid, ordering all labor to stay away from the plant of petitioner. That the respondent combining and conspiring as aforesaid, induced and caused irresponsible men, whose names are unknown, to come from the State of Missouri to picket the the plant and engage in said acts of violence and that most of said men so coming from the State of Missouri, after committing assault on the employees of the petitioner, immediately thereafter left the State of Illinois and other men were thereupon caused to come from the State of Missouri to the vicinity of the said plant of the petitioner by the respondents, to likewise take part in the

intimidation and threats and acts of violence towards the said employees of the petitioner. That the respondents caused threats to be circulated and threats had been carried to the petitioner that if the respondents did not accomplish their purpose by intimidation and acts of violence, that the respondents would cause the plant of the petitioner at Granite City to be destroyed or burned. (Printed Rec., 4-5.)

The restraining order was issued on the morning of the 13th day of May, 1914 (Printed Rec., 10), and the Marshal went to Granite City that evening to serve it. After the issuance of the restraining order, and just prior to the arrival of the Marshal, a number of pickets assaulted, without provocation, two other employees of the plant, and left them lying unconscious upon the walk. (Printed Rec., 27.) From the time the restraining order was served until now, the plant has operated without any trouble, and has had an abundance of capable and efficient workmen to conduct its operations. (Printed Rec., 23 and 41.)

Answers were filed (Printed Rec., 15) by the respondents to the petitioner's bill for injunction, and on June 8, 1914, the District Court proceeded to final hearing upon the pleadings and the evidence offered in open court. (Printed Rec., 20.) Thirty-four witnesses were sworn and testified orally. Documentary and record evidence was offered by both parties. At the close of the testimony the case was decided by the Presiding Judge (Humphrey), (whose opinion appears at page 62, Printed Rec.) On June 9, 1914, a final decree containing permanent injunction was entered. (Printed Rec., 66.)

The form of the injunction as entered by the District Court is as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Issac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the

said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employes, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

From the final decree an appeal was prosecuted to the United States Circuit Court of Appeals for the Seventh Circuit. The appeal was argued on January 26, 1915, a re-argument was ordered on May 23, 1916, and on December 6, 1916, an opinion was filed (Printed Rec., 87) reversing the decree of the District Court, with direction to modify the same in accordance with the views expressed in the opinion. The suggested modification is as follows:

"In so far as the decree restrains all picketing and all persuasion and all interference

> with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this court for the modification of the decree in the Allis-Chalmers case will afford sufficient and proper guidance for the modification of the decree herein."

The Court of Appeals having failed to definitely fix the form of modification, we must have reference to the opinion and order in Iron Moulders' Union *v.* Allis-Chalmers Company, 166 Fed. 45, for more definite information on the subject. The modification in Iron Moulders' Union *v.* Allis-Chalmers Company, *supra*, apparently adopted by the Circuit Court of Appeals in the instant case substantially eliminated from the final decree any injunction against persuasion, against picketing and against interference with the lawful conduct of the business of the petitioner unless such persuasion, picketing and interference are accompanied by intimidation, force and assault.

The bill for injunction was not a bill to restrain the organization of a Union; it was not to restrain any employee from abandoning his employment; it was not a bill to keep the peace; it was not a bill simply to enjoin a mob and mob violence. Neither the right of any laborer or any number of laborers employed by the petitioner to quit work was challenged, nor was the right of any employee of the petitioner to strike and abandon his work involved. The scope and purpose of the bill was to restrain an unlawful combination and conspiracy of and amongst the respondents, none of whom were employees of the petitioner, nor

representatives of the petitioner's employees, nor authorized by the employees to represent and speak for them, from interfering with the petitioner in the operation of its plant and from interfering with its employees in their right to work for the petitioner and discharge their contract obligations to the petitioner.

The bill here was to enjoin meddlers and strangers to the petitioner from carrying out a conspiracy to force and compel the employees of the petitioner to strike, when the employees themselves would not and did not strike; to force and compel the employees of the petitioner to leave their employment and violate their contracts of employment with the petitioner, when the employees themselves did not desire to leave their employment and did not desire to violate their contracts of employment; and to close down the plant of the petitioner unless the demands of these interlopers and strangers for a change of wages, then satisfactory to the employees, were granted, the employees themselves being satisfied with the wages being paid them and not asking any change.

BRIEF.

I.

Petitioner's bill of complaint is based upon the criminal statutes of Illinois and upon the decisions of the Supreme Court of the State of Illinois and which constitute the rule in Illinois and should control the decision in this case.

The statutes applicable to this case are:

Section 46, Chapter 38, Criminal Code:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * business or employment or property of another * * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2000., or both."

Section 158, Chapter 38:

> "If any two or more persons shall combine for the purpose of depriving the owner or possessor of property of its lawful use and management, or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500. or confined in the county jail not exceeding six months."

Section 159, Chapter 38:

> "If any person shall, by threat, intimidation or unlawful interference, seek to prevent any other person from working or from

obtaining work at any lawful business, on any terms that he may see fit, such person so offending shall be fined not exceeding $200."

The decisions of the Supreme Court of Illinois principally relied on are as follows:

Doremus *v.* Hennessey, 176 Ill. 608.
O'Brien *v.* People, 216 Ill.
Purington *v.* Hinchliff, 219 Ill., 159.
Franklin Union *v.* People, 220 Ill., 355.
Barnes *v.* Typographical Union, 232 Ill., 425.
Philip Henrici Co. *v.* Alexander, 198 Ill. Appellate, 568.

II.

Kemp *v.* Division No. 241 Ass'n, 255 Ill., 213, does not modify the Illinois rule contended for by petitioner.

III.

Iron Moulders Union *v.* Allis-Chalmers Co., 166 Fed. Rep., 45, is not applicable or authority in this case.

IV.

Under the decisions of this Court the rule in Illinois should control the decision here.

Burgess *v.* Seligman, 107 U. S., 20.
Bucher *v.* Cheshire Railroad Co., 125 U. S., 555.
Gormley *v.* Clark, 134 U. S., 338.

V.

The rule in Illinois followed by courts in other states and jurisdictions:

Atchison, Topeka & Santa Fe *v.* Gee, 139 Fed. Rep., 582.

Beck *v.* Railway Teamster's Protective Union, 77 N. W., 13.

Gompers *v.* Bucks Stove & R. Co., 221 U. S., 418.

Jones, et al., *v.* Van Winkle Gin & Machine Works, 131 Ga., 336 (62 S. E., 237).

Sailors Union *v.* Hammond Lumber Co., 156 Fed. Rep., 450.

Stephens *v.* Ohio State Telephone Co., 240 Fed. Rep., 759.

Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., 263 Fed. Rep., 192.

Kinloch Telephone Co. *v.* Local Union No. 2, etc., 265 Fed. Rep., 312.

VI.

The law as laid down in Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S., 229, is decisive of the instant case.

VII.

The law as announced in the Hitchman case is supported in other states and jurisdictions.

Old Dominion Steamship Co. *v.* McKenna, 3 Fed. Rep., 48.

United States *v.* Haggerty, 116 Fed., 510 (C. C. W. Va., 1902).

Casey *v.* Cincinnati Typographical Union No. 3, 45 Fed. Rep., 135 (C. C. Ohio, 1891).

State *v.* Glidden, 8 Atl. Rep., 890 (Conn., 1887).

Jersey City Printing Co. *v.* Vassidy, 53 Atl. Rep., 230 (N. J., 1902).

Frank *v.* Herold, 63 N. J. Eq., 443; 52 Atl., 152, 1901.

Flaccus *v.* Smith, 199 Pa., 128.

And also in Eagle Glass Mfg. Co. *v.* Rowe, 245 U. S., 275.

VIII.

Bludgeon and brutality the form of respondents' picketing.

IX.

The "Clayton Act" is not applicable nor available against petitioner.

(a) The Final Decree of the District Court of the United States was entered June 9, 1914, and the "Clayton Act" became law October 15, 1914. That Act cannot be made retroactively applicable to the instant case.

State of Pennsylvania *v.* Wheeling Bridge Co., 59 U. S., 421.

Edwards *v.* Kearzey, 96 U. S., 293.

Memphis *v.* U. S., 97 U. S., 293.

Fishers Negros *v.* Dabbs, 6 Yerg. Tenn., 119.

Livingston *v.* Livingston, 173 N. Y., 377.

Humphrey *v.* Gerard, 83 Conn., 346.

Paine Lumber Co. *v.* Neal, 244 U. S., 459.

(b) The "Clayton Act" not available because inapplicable to the facts in the instant case.

Stephens *v.* Ohio State Telephone Co., *Supra.*
Montgomery *v.* Pacific Electric Railway Co., *Supra.*
Dail-Overland *v.* Willys-Overland, *Supra.*
Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., *Supra.*
Kinloch Telephone Co. *v.* Local Union No. 2, etc., *Supra.*
Langenberg Hat Co. *v.* United Cloth Hat & Cap, etc., *Supra.*
King *v.* Weiss & Lesh Mfg. Co., *Supra.*
Davis *v.* Henry, *Supra.*

X.

Under the decisions of this court the "Clayton Act" is inapplicable and unavailable in the instant case.

Paine Lumber Co. *v.* Neal, 244 U. S., 459.
Duplex Printing Press Co. *v.* Deering, 254 U. S. 443.

XI.

Errors in respondent's statements and quotations of the evidence.

Argument.

The petitioner in its bill of complaint and at the hearing contended and proved that the respondents entered into a combination and conspiracy to injure and interfere with the property and the business of the petitioner. There was no dispute in the facts on that issue. The respondents admitted calling the strike and its purpose. The District Judge, who saw the witnesses testify, and heard the evidence submitted, found, as matter of fact, that the charge of combination and conspiracy was proved and sustained. He said in his opinion (Printed Rec., 64),

> "The proof here sustains the averments of the bill as to the illegal combinations; such a combination can not have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be *violent or peaceful*". (Italics ours.)

The bill was bottomed not only upon the common law right of petitioner to enjoin and restrain the prosecution of a combination and conspiracy to injure, interrupt and interfere with its business, its property and property rights, but specifically upon sections 46, 158 and 159, Chapter 38 of the Criminal Code of the State of Illinois, which in terms provide and hold that the acts of the respondents, alleged and proved, constitute a criminal conspiracy.

The Combination and Conspiracy.

The District Judge made his findings on the facts with reference to such conspiracy. See his opinion (Printed Rec., 62) as follows:

"This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trades of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests; viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for the hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one

he wants to make. We wouldn't be a republic if we did that. We would not be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presuppose that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law and there is no other view to take of it. *This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it.*" (Printed Rec., 62.)

Earl Galloway, the president of the Tri-City Central Trades Council, testified that around the 20th or 21st of April he told Mr. Walcher, superintendent of the petitioner's plant, that he and his committee represented labor organizations, and in answer to an inquiry of Mr. Walcher if he and the Committee were employees of the petitioner said that "they were not at the present time, that there had been, *but they were representatives of the different local unions.*" He testified further that immediately after such meeting *he reported back to the Joint Board and a strike was declared on the plant. "Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts something like 8 or 10 cents, I believe.*" (Printed Rec., 41.)

The hand bills read as shown hereinabove at page 4:

"UNION MEN
AND ALL LABOR
STAY AWAY
FROM THE
AMERICAN STEEL FOUNDRY
GRANITE CITY, ILL.
ALL TRADES ARE ON STRIKE

For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.

By Order of Ways and Means
Committee of Tri-City Central
Trades Council.
Endorsed by Tri-City Central Trades Council." (Printed Rec., 24.)

He further testified (Printed Rec., 45),

"On the seven or eight occasions I was down there (at the plant of the petitioner) I went down to see how things were going and *went down to see that things were going right.* These pickets were stationed adjacent to Neidringhaus Avenue around the Depot. That is one of the main streets leading from the plant."

Another of the respondents, B. F. Lamb, stated to Oscar E. Hall, as shown in Mr. Hall's testimony (Printed Rec., 39) as follows:

"About the 24th or 25th of April I had a conversation with the defendant Lamb, he said to me, 'We don't like the way you have treated our boys down here and we just came

> down to raise a little hell.' Just before he said this he was with a party of five or six men."

This was not challenged or contradicted by Lamb, though he testified at the hearing.

The respondent Lamb testified (Printed Rec., 48),

> "Prior to the strike some of the men in my organization were employed at the plant, we called them out after the strike had been declared."

He also testified (Printed Rec., 47) that his business is representing the Union National Association of Machinists.

W. J. Hartbeck, a witness called by the respondents, testified (Printed Rec., 51),

> "When the reduction of wages took effect, *I was ordered by the superior of our district board to go over there, and to have men over there that would go to work to try to have them come out, if they could under reduction of wages;* probably some of our union men would go in unbeknowns of the trouble. At the time I went over there none of our men were at work in the plant because they had been sent for. But I went over anyway."

The unlawful purpose stands admitted and proved, and one of the respondents on cross-examination boldly testified (Printed Rec., 56):

> "I wanted to get all the men out of the plant. *I wanted to quit work and didn't want anybody else to work in my place. I knew if they didn't have men to fill my position the plant couldn't run and I was trying to keep them from getting men to fill those positions. I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade the man not to take the places of the strikers the Com-*

pany would restore the wages. I was trying to make them restore the wages or close down the plant.''

Counsel for respondents in the brief filed in this case in response to the petition for certiorari freely states on page 35:

''And, in this case had the petitioner agreed to arbitration there would have been no strike; there would have been no conflict between strike-breakers and others, and there would have been no cause for the ill feeling that was later engendered. And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.''

The evidence of conspiracy is clear. There can be no dispute in that regard. The Judge of the District Court saw and heard the witnesses as they testified, and his opinion and decision under the circumstances should be persuasive, indeed conclusive, on the facts.

Execution of Combination and Conspiracy.

NONE OF THE RESPONDENTS WAS IN THE EMPLOY OF THE PETITIONER OR AUTHORIZED TO SPEAK OR ACT FOR THE EMPLOYEES, BUT WERE GRATUITOUS INTRUDERS AND INTERLOPERS.

The respondent sought to carry out the conspiracy and combination by calling and seeking to force a ''strike'' at the plant of the petitioner and an abandonment of employment by the petitioner's employees, and to this end used and employed intimidation, violence, assaults and threats to destroy petitioner's property through pickets selected and appointed by the Central Trades Council.

So far as the record discloses petitioner's employees had never made any complaint or had any

controversy with the petitioner, either as to wages, terms or conditions of employment; the employees neither had nor ever expressed to the petitioner any grievance of any kind; the relationship between the petitioner and its employees was one of harmony and full accord; there was neither dissatisfaction or discontent on the part of the employees as to their relationship and their employment with the petitioner. Indeed, the record fully demonstrates and the evidence indisputably proves, the employees did not initiate or cause a strike at the petitioner's plant; did not leave their employment or seek to terminate the relationship of employment between themselves and the petitioner. The employees did not meet or discuss amongst themselves, or with any other persons, the subject matter of wages, terms or conditions of employment in any way whatsoever, nor is there any evidence anywhere in the record that the employees of petitioner authorized or directed the Tri-City Central Trades Council, or its officers, or any committee of its appointment, to discuss with the petitioner the question of wages, terms or conditions of employment, or to initiate a strike at the petitioner's plant. On the contrary, the action of the Tri-City Central Trades Council and its officers and its self-created committee gratuitously and without previous authority from the employees of the petitioner, sought to force the petitioner to change its scale of wages, which then was satisfactory to the employees, and failing in its effort in that regard, gratuitously, and without previous authority of the employees of the petitioner, initiated and caused a strike to be called at the plant of the petitioner and caused hand bills and printed notices of such unauthorized strike to be posted and circulated without any previous authority from the employees of the petitioner.

These methods for initiating and causing a cessation of employment of the employees of the petitioner not being successful, the Tri-City Central Trades Council and its officers and its self-appointed Committee undertook to accomplish its unlawful combination and conspiracy by picketing the plant and premises of the petitioner, and through such picketing engaged in threats, intimidation, violence, assault and other forms of lawlessness, with bludgeon and brutality; and interrupted and interfered with the business and property and property rights of the petitioner and its employees and their contracts of employment with the petitioner.

While here and there some one of the respondents sought to place a different construction upon the cause and character of the assaults, nevertheless the fact, and the evidence supporting the fact, remains practically undisputed, and upon this point the District Judge made his finding, as shown in his opinion (Printed Rec., 64), as follows:

> "The proof here sustains the averments of the bill as to the illegal combinations; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful.
>
> However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the condition under which he is working; talk to him about the strike, talk to

him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There can be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you." (Printed Rec., 64.)

And the Circuit Court of Appeals on this point says (Printed Rec., 89):

"Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which, if carried out, would have resulted in the destruction of property. The District Judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts." (See Printed Rec., 89, 90.)

Although we contend any form of picketing—even peaceful and unthreatening—was not permissible and was properly restrained by the District Judge, we shall later herein call attention to the evidence of the picketing practiced, which makes the expression of the Circuit Court of Appeals, though sustaining the District Judge, a colorless finding upon indisputable evidence of brutality and lawlessness.

Tri-City Central Trades Council, stranger and intruder, combined and conspired to injure petitioner.

So far as the record discloses, none of the employees of the petitioner were members of the Tri-City Central Trades Council. The Central Trades Council was composed of trade unions. The record does not disclose membership of the employees of the petitioner in any of the trades unions embraced within the Central Trades Council, excepting one, namely Churchill, who was a member of the Machinists Union, though not a member of the Central Trades Council. Cook had never been a member of any union and was not a member of the Central Trades Council. Earl Galloway, the president of the Central Trades Council, did not claim to Mr. Walcher at the time he appeared at the plant and sought to discuss the matter of wages of the employees of the petitioner, that he represented any men who were then in the petitioner's employ, nor did he state or claim at that time, or at any other time, that the Trades Council or the officers thereof, or the self-appointed committee, had been authorized by the employees of the petitioner, in meeting or out of meeting, to represent them in any respect concerning their relationship and employment with the petitioner or the wages paid.

The Circuit Court of Appeals, however, without justification in the record and without evidence to warrant it, said (Printed Rec., 93):

> "Among the defendants in this case there were some former employes. Many of the plaintiff's employes at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest. Under these circumstances it cannot be said that the labor organization was an intermeddler or that its course was contrary to the wishes of its members or the wishes of the plaintiff's employes."

In view of this statement in the opinion of the Circuit Court of Appeals, we feel constrained to call this court's attention to all the evidence in the record on this subject:

Mr. Walcher, the manager of petitioner, testified (Printed Rec., 24):

> "At no time between April 1, 1914, and the time the restraining order was issued was either the defendants McKenny, Galloway, Thornberg (William), Holmes, C. Thornberg, Burton, Roach, Aldridge, Lamb, Ishman, McDonough or Gerlich in the employ of the American Steel Foundries. The defendants Cook and Churchill were the only ones in our employ during that time."

Printed Rec., 40:

> "Question by the Court: If men were unmolested would you have any trouble filling all the places you want?
>
> "A. I think not.
>
> "Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none."

* * * * * *

Printed Rec., 41:

> "Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from any one in our employ."
>
> "When we closed in November all our employees were discharged; they were laid off indefinitely on account of closing down the plant. When we opened April the 6th we employed whoever we saw fit; whoever applied for employment at the gate. Started the plant the same as a new plant. We only had called for in round numbers, three hundred men, and laid off approximately thirteen hundred men. Eighty or ninety per cent of the employees were old men. I assume these men were members of various organizations; I can't state definitely as to that."

Earl Galloway, president of Tri-City Central Trades Council, testified (Printed Rec., 45):

> "I am a plumber and was never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there."

B. F. Lamb testified (Printed Rec., 47):

> "My business is representing the Union National Association of Machinists; I am a machinist by trade. I live in St. Louis. The Tri-City Central Trade Council is in my district, therefore I am in Granite City quite often; I have a local there and they are affiliated with the Council."

Printed Rec., 48:

> "I never worked for the American Steel Foundries."

W. J. Hartbeck testified (Printed Rec., 50):

"I live at St. Louis, am a blacksmith, a member of the blacksmiths' union and have no connection with the Central Trades Council of Granite City."

Printed Rec., 51:

"I never worked for the American Steel Foundries."

Harry McKenny testified (Printed Rec., 51):

"I live in Granite City and am a steam fitter and belong to one of these unions."

Printed Rec., 52:

"I am a steam fitter and did not work for the complainant in April and May, 1914. I did work for them in 1907, but quit because I was ordered to help a machinist that wasn't a union man."

Thomas Churchill testified (Printed Rec., 52):

"I am a machinist. I was working for the plant when it closed down in November and went back to work when they opened but got an increase over the new men they had, but still it was a reduction at the same time. I am connected with the machinist's labor union, am a member."

Printed Rec., 53:

"At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had to take at the time being and I haven't had anything better since. I didn't get a better job. *I quit because these fellows asked me to go out.*"

Ted Ishman testified (Printed Rec., 54):

"I am a craneman and reside at Granite City, a member of the cranesmen's union affiliated with the Tri-City Central Trades Council."

Printed Rec., 54:

"I was not working at the plant this spring after it resumed operations."

Clay Holmes testified (Printed Rec., 55):

"I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

C. E. Gerlich testified (Printed Rec., 55):

"I am a machinist residing in St. Louis. I worked for the complainant but haven't for two years. I belong to the machinists' union. I work at the Commonwealth plant, about two blocks away from this plant."

Isaac Cook testified (Printed Rec., 56):

"I am an electrician and belong to none of the unions. I worked at the plant about three weeks after it started up."

* * * * * * * *

"I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, and *I quit because they said there was a strike on.*"

C. L. Burton testified (Printed Rec., 57):

"I reside at Granite City, an Alderman of the Fifth Ward. I work at the Madison Car

Shops. In April and May I was working at the Laclede Steel Plant in Madison. I never worked for the Steel Foundries."

Edward Wade testified (Printed Rec., 58):

"I am a sewer man or plumber's laborer. I am Treasurer of the Central Trades Council."

E. H. Taylor testified (Printed Rec., 59):

"I am an electrician, a member of their union and of the Central Trades Council. I am on the board of trustees of the Council."

* * * * * * * *

"I was not working for the American Steel Foundries."

Ed Roach testified (Printed Rec., 59):

"I am a machinist, a member of their union and reside in East St. Louis."

* * * * * * *

"I haven't worked for the foundries since a year ago this month."

T. M. Cavanaugh testified (Printed Rec., 57 and 58):

"At the regular meeting on April 15th of the Tri-City Central Trades Council a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday, the 19th."

* * * * * * * *

"On April 15th we had a communication from the unions representing some of the trades working at the Foundries. *We had complaints from the men themselves working at the foundry. I couldn't state their names.*

I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

We have quoted from the evidence of all the witnesses in the case, respondent or otherwise, and the court will observe that *no member of the Trades Council was working for or was an employee of the petitioner at the time in question.* The only two employees of the petitioner, as we have above shown, who quit because of the interference by the respondent, Trades Council, were Cook, who was *not* a member of the Trades Council nor a member of any union, and Churchill, who was not a member of the Trades Council, but claimed to be a member of a machinists' union. The testimony of Cavanaugh does not support the statement in the opinion of the Circuit Court of Appeals that *"many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council."*

Cavanaugh testifies that they had complaints from the men themselves working at the foundry; that he couldn't state their names, nor state the name of any employee who made any complaint. Surely this testimony of Cavanaugh cannot be construed into proof sustaining the statement of the Circuit Court of Appeals just quoted. We repeat there is no evidence in this record that any of the employees of the petitioner except one, Churchill, was a member even of any union. The record is barren of any connection or relationship between the Tri-City Central Trades Council and the petitioner, or its employes.

Even Earl Galloway, the president of the Trades Council, with reference to the meeting with petitioner's manager before *it called the strike* testified as follows (Printed Rec., page 44):

> "A Committee was appointed by the Central body to wait upon this corporation to arbitrate the question. I forget all of the Committee; they were ten and I was one of them. We went to the plant and the gate man informed me the spokesman or chairman would be permitted to enter. As chairman I went in to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; *he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions;* he stated that he would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievance to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back.
>
> "This was about the 20th or 21st of April. *It was reported back to the joint board and a strike was declared on the plant.* Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts, I believe."

Walcher, the manager of petitioner's plant, testified, as above quoted (Printed Rec., 41):

> "Earl Galloway was admitted to my office and told me there was a Committee that represented the labor organizations; *I asked him if the Committee represented our employees and he said they did not*, and I told him we didn't

> recognize any labor organizations; we had never had any complaints or demands from any of our employees."

The court will note not only that the statement of the Circuit Court of Appeals above quoted is unsupported by the evidence in the record, but is in the very teeth of the testimony, which conclusively and indisputably refutes that statement. And it appears clearly and conclusively that the employees of the petitioner did not strike; that the employees of petitioner did not complain, either of wages or of conditions; that the employees of petitioner did not express dissatisfaction or discontent; that the employees of petitioner did not interfere with the operation of the petitioner's plant or leave its employ, but that, *the Tri-City Central Trades Council and its officers, total strangers to the petitioner, "struck" the plant.* The Tri-City Central Trades Council, not representing the petitioner's employees nor even claiming to represent them, sought not only to coerce the petitioner into a change of the terms of contract between itself and its employees without knowledge or action on the part of the employees, but even sought to coerce the employees and workers themselves to violate their contracts with their employer; terminate their relationship with their employer; leave the employment of their employer, and cause a strike at the plant; and, purely as a gratuitous meddler and interloper secure a wage which the employees themselves did not seek; and, if their end could not be attained in any other way, resort to intimidation, violence, assault and, if necessary, destruction of petitioner's property. (See Printed Rec., 24.)

I.

The Statutes and Decisions of the Supreme Court of Illinois Should Prevail.

The Circuit Court of Appeals rested its decision upon Iron Moulders' Union *v.* Allis Chalmers Company, supra, and the cases there cited which in the pleadings and facts are entirely different from those in the instant case; and entirely ignored the fact that the bill filed here is bottomed upon the provisions of the Criminal Code of the State of Illinois and upon the principles of law applicable to the facts, as pronounced by the Supreme Court of Illinois, establishing the rule in Illinois with respect to the subject-matter of conspiracy, picketing and persuasion.

The sections of the Criminal Code referred to are:

Section 46, Chap. 38, entitled "Criminal Code" of the State of Illinois, which reads as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * *business or employment or property of another* * * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspriacy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000, or both."

Section 158 of the same chapter, reading:

> "If any two or more persons shall combine *for the purpose of depriving the owner or possessor of property of its lawful use and management*, or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the

parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."

And Section 159 of the same chapter, as follows:

"If any person shall, by threat, intimidation or unlawful interference seek to prevent any other person from working or from obtaining work at any lawful business, on any terms that he may see fit, such person so offending shall be fined not exceeding $200."

The court will please remember the quotation from the opinion of District Judge Humphrey (Printed Rec., 62-63):

"This bill is brought upon a theory different from most of the bills in the books. *This bill charges a combination, a conspiracy.* The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful."

The law of Illinois applicable to the facts in this case is well settled.

The Supreme Court of Illinois in an unbroken line of decisions has held the acts complained of to be unlawful and to constitute an unlawful combination and conspiracy which may be enjoined by Courts of Equity.

In the leading case of Barnes *v.* Typographical Union, 232 Ill. 425, Justice Cartwright says, at page 431:

"It is clear that the union and its members were not in competition with the complainant in respect to labor or anything else. *The members of the union had left the service of the complainants, and their only purpose was to prevent the complainant from carrying on their business. They were endeavoring to compel the complainants to submit to their dictation by depriving the complainants of*

their legal right to employ such laborers as they might choose. If there is a combination to injure a person because he refuses to comply with some demand where he has a legal right to refuse, there is no way of classifying such acts in furtherance of such purpose as competition. The acts alleged in the bill were directed primarily against the complainants for the purpose of doing them harm, and that sort of action is not lawful competition.

"The whole scheme as set out in the bill was to injure the complainants for the purpose of compelling them to yield to the union their absolute legal right to manage their own business in their own way * * **it follows that any interference with that right whether by threats or intimidation or by persuasion accompanied by actual malice is a legal wrong.*"

At page 434 the Court further says:

"The facts stated in the bill authorized an injunction to prevent carrying out the scheme of the defendants.

"It is next contended that if any injunction was authorized, the injunction granted was too broad in *enjoining appellants from peaceful picketing of complainants' premises and from congregating about or near their places of business for the purpose of inducing or soliciting employees to leave the employment. It is contended that a peaceful picket line around a shop is entirely lawful.* But this court has held otherwise in Franklin Union *v.* People, *supra,* where endorsement was given to the doctrine of Beck *v.* Railway Teamsters' Protective Union, 118 Mich., 407, by quoting therefrom, as follows: 'To picket complainants' premises in order to intercept their teamsters or persons going there to trade is unlawful. It, itself, is an act of intimidation and an unwarrantable interference with the right of free trade. The highways and public streets must be free to all for the purposes of trade, commerce and labor. The law protects the buyer, the seller, the merchant, the manufacturer and the laborer in

the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done ten or ten hundred feet away.' The court also gave its approval to the decision in Vegelahn *v.* Guntner, 167 Mass., 92. In that case a patrol of two men in front of the plaintiff's factory, maintained as one of the means of carrying out the defendants' plan, was held to be an unlawful interference with the rights of the employer and the employed. The patroling or picketing of the premises was considered to have elements of intimidation, and the court decided that the motive of obtaining better wages for themselves on the part of the defendants did not justify maintaining a patrol in front of the complainant's premises as a means of carrying out their conspiracy. The very fact of establishing a picket line is evidence of an intention to annoy, embarrass and intimidate, whether physical violence is resorted to or not. There have been a few cases where it was held that picketing, by a labor union, of a place of business is not necessarily unlawful if the pickets are peaceful and well behaved, but if the watching and besetting of the workmen is carried to such a length as to constitute an annoyance to them or their employer it becomes unlawful. But manifestly that is not a safe rule and furnishes no fixed or certain standard of what is lawful or unlawful. Any picket line must result in annoyance both to the employer and the workmen, no matter what is said or done, and to say that the court is to determine by the degree of annoyance, whether it shall be stopped or not would furnish no guide, but leave the question to the individual notions or bias of the particular Judge. To picket the complainants' premises was in itself an act of intimidation and an unwarrantable interference with their rights. Pickets were, in fact, guilty of actual intimidation and threats, but if they had not been, the complainants

were entitled to be protected from the annoyance.

"Another supposed right of the defendants asserted by counsel is the exercise of the power of persuasion, and it must be conceded that argument and persuasion are lawful if not directed to the accomplishment of an illegal and unlawful purpose. The object of the defendants as set forth in the bill was illegal, and if there is a malevolent intent to produce an illegal result, and it is produced, it makes no difference whether it is accomplished by mere persuasion or by physical violence (Curren *v.* Galen, 152 N. Y., 33)."

In the case of O'Brien *v.* People, 216 Ill., the Court said at p. 371:

"The law is well settled that every person shall be protected in the right to enter into contracts or in refusing to do so, as he shall deem best for the advancement of his own interests, without interference by others. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, and any attempt to compel an individual, firm or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees is not only unlawful and actionable, but is an interference with the exercise of the highest civil right."

In the case of Doremus *v.* Hennessey, 176 Ill. 608, on page 614, it was said:

"The common law seeks to protect every person against the wrongful acts of others, whether committed alone or by combination, and an action may be had for injuries done which cause another loss in the enjoyment of any right or privilege of property. No persons, individually or by combination, have the right to directly or indirectly interfere or disturb another in his lawful business or

> occupation, or to threaten to do so, for the sake of compelling him to do some act which, in his judgment, his own interest does not require. * * * It is clear that it is unlawful and actionable for one man from unlawful motives to interfere with another's trade by fraud, misrepresentation, or by molesting his customers, or those who would be customers, or by preventing others from working for him or causing them to leave his employ by fraud or misrepresentation, or physical or moral intimidation, or persuasion, with an intent to inflict an injury which causes loss. * * * Every man has a right, under the law, as between himself and others, to full freedom in disposing of his own labor or capital according to his own will, and anyone who invades that right without lawful cause or justification commits a legal wrong, and, if followed by an injury caused in consequence thereof, the one whose right is thus invaded has a legal ground of action for such wrong."

In Purington *v.* Hinchliff, 219 Ill. 159, on pages 166 and 167, the Court said:

> "The question of unlawful conspiracy to injure the business of another, and the necessary elements to constitute it, has been before this court on other occasions. Our reports contain many well considered cases on the subject. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, and any loss wilfully caused by such interference will give the party injured a right of action for all damages sustained. All parties to a conspiracy to ruin the business of another because of his refusal to do some act against his will or judgment are liable for all overt acts illegally done pursuant to such conspiracy and for the subsequent loss, whether they were active participants or not."

Under the decision of the Supreme Court of Illinois, the acts alleged and proved establish a combination and conspiracy within the provisions of the criminal statutes above cited and quoted. The plant, property and business of the petitioner were located and used and operated in the State of Illinois. The acts complained of were committed in Illinois. The petitioner was entitled to protection of its property and its operations provided for by the laws of Illinois and the adjudications of its Supreme Court. The rule of law as established by the statutes and the Supreme Court decisions of Illinois should prevail and control, and the Federal Courts as a matter of law and comity are bound to follow the rule of law so established by the Illinois statutes and Supreme Court decisions.

II.

Kemp v. Division No. 241 Ass'n, 255 Illinois, 213, does not modify the Illinois rule contended for by petitioner.

To overcome the petitioner's contention that the Illinois rule, as expressed in Barnes *v.* Typographical Union, *supra,* and the other cases cited, should obtain and be followed in the instant case, counsel for respondents in his reply cited the case of Kemp *v.* Division No. 241 Ass'n., 255 Ill. 213.

A reading of the majority opinions in that case will demonstrate that the case did not nor was it intended to modify or overrule Barnes *v.* Typographical Union, *supra;* also that it does not bear upon the question involved here. The purpose of the bill in that case as stated by the Court there, page 2, was as follows:

> "The only reasonable conclusion to be deduced from the allegations and prayer of the

> bill is that appellees by this proceeding seek to restrain the union and its officers from calling a strike of its members, the obvious purpose of the injunction sought being to prevent the union employees of the Railways Company from quitting their employment *in accordance with the vote previously taken, by which those employees as members of the union declared that they would cease to work with men* who, after receiving benefits through their organization, refused to continue members. * * * The question presented for our determination, therefore, is whether a court of equity is authorized upon application by the non-union employees to restrain the union and its officers from calling a strike of the union employees *in accordance with the vote previously taken by the union employees as members of the union, where the* purpose of the proposed strike is to compel the employer to discharge non-union employees who are engaged in the same class of work."

The Court will note that the question of whether or not there should be a strike was submitted to and voted upon by the union employees of the Railways Company, and that representations or action of the organization in dealing with the Railways Company *was upon the express authority conferred by the vote of the employees.*

The case at bar presents no such situation. The Tri-City Central Trades Council arrogated to itself the prerogative and privilege to demand from petitioner a change in wages, without meeting or vote of the petitioner's employees and without authority or request of the empolyees.

No case is cited to sustain the claim of the respondents that the Central Trades Council might seek or demand from the petitioner in behalf of its employees a change in wages,—which at that time as shown by the record were satisfactory to both the petitioner and its employees—without the

previous request or authority of the employees, to make such demands or to represent or speak for them in that regard.

The function of labor unions and the authority to represent *its members* (in the case at bar none of the petitioner's employees were members of the Tri-City Central Trades Council and there is affirmative proof of only one of the employees being a member of any labor organization) is aptly referred to in Kemp *v.* Division No. 241 Ass'n., *supra,* as follows:

> "The purpose of organizing labor unions is to enable those employees who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union, and to accomplish their ends through concerted action. *If duly authorized by the employees to adjust any controversy arising between them and their employers, the union, its officers and committees, are merely acting as agents of the employees in the matter.* If the union employees have the legal right to inform their employers of their refusal to work with the appellees, they had the legal right to convey that information to the employer through an agent or agents, and the agent or agents who so act would not commit an actionable wrong thereby, nor by reporting back to the union employees the result of the conference with the employer."

In that connection let us draw attention to statement on page 13 of respondents' brief on petition for Writ of Certiorari, in referring to the case of L. W. & W. R. R. *v.* Switchmen's Union, 158 Fed. 541, where an injunction was sought to restrain switchmen from violating a contract by striking, where the Court is quoted as saying:

"I am inclined to think that defendants had the right to select a Committee to request a conference * * * and they could, if they chose to do so, delegate an officer of the Switchmen's Union to represent them and to advocate an adjustment of differences," as follows:

> "And that is just what the employees of the Mill Company did in this case, delegate such duty to the Tri-City Central Trades Council."

The Court will look in vain for anything in the record to sustain that statement.

At page 23 of respondents' brief we find:

> "* * * while in the case at bar the strikers were represented by the Tri-City Central Trades Council,"

and at page 26:

> "* * * and the wage earners employed in such mill were represented by the Central Trades Council."

We say with confidence the record not only fails to support these statements, but on the contrary expressly refutes and disproves them.

Walcher, the works manager of the petitioner, on cross examination by counsel for respondents, testified (Rec., 41), as follows:

> "Earl Galloway was admitted to my office and told me there was a committee that represented the labor organization; *I asked him if the committee represented our employees and he said they did not,* and I told him we didn't recognize any labor organization."

Galloway did not deny or contradict the testimony of Walcher to the effect that the committee

of which he, Galloway, was chairman, did not represent the employees of petitioner. When he was interrogated on this point he testified (Printed Rec., 44):

> "As chairman I went to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; he asked me who the committee was; if it was any of his employees; I told him not at the present time; that there had been but they were representatives of the different local unions."

The record is barren of any evidence to sustain any claim or statement to the effect that the Tri-City Central Trades Council or its officers or self-appointed committee were at any time authorized by the employees of the petitioner to seek a meeting with the petitioner with reference to wages or conditions of employment; or to make any demand upon the petitioner on account thereof; or to speak for them with reference thereto or with reference to any other matter.

The undisputed evidence is that the Tri-City Central Trades Council gratuitously and on its own initiative and not the employers of petitioner, declared a strike at the plant of the petitioner. That the employees made no complaint of their wages or working conditions. That the relations between the petitioner and its employees were in perfect amity and accord. That the Tri-City Trades Council demanded from petitioner a change in the scale of wages, and upon refusal to

deal with its committee, declared a strike at the petitioner's plant. There is no proof in the record to justify the argument or contention that any employee of the petitioner made complaint to either the Tri-City Trades Council or to any union affiliated therewith. The evidence, so far as the record discloses, is to the contrary.

The employees of the petitioner did not strike nor cause any strike. The circular appearing on page 30 of the record states who called the strike.

Even the two men who quit the employ of petitioner as a result of the strike called by the Tri-City Trades Council had no relation to or connection with the initiation of the strike, and as disclosed by the record, knew nothing of it until after the strike had been launched. Each testified that he quit work because a strike was on.

In that connection note these facts appearing in Kemp *v.* Division No. 21 Ass'n., *supra*:

> "The threat made by the committee that the members of the union would call a strike of the employees of the Railways Company unless their demands were complied with, meant no more than that the union employees would be notified to quit work in a body at a definite time if the non-union employees were retained in the service. *This action of the committee, if not then authorized, was ratified by an almost unanimous vote of the union employees. The union employees thereby authorized and instructed the union, its officers and members, to call the strike which it is sought by this proceeding to prevent. The contemplated action of the union employees is not the result of the dictation of any officer or officers of the union or of any person not interested in the employment, but is the*

voluntary action of the union employees of the Railways Company."

In the case at bar a very reverse state of affairs existed. The employees did *not* authorize the Tri-City Trades Council or its self-appointed committee to act for them, and did *not* ratify their action, but on the contrary were ignorant of the Trades Council's activities, and with the exception of two men, Churchill and Cook, refused to leave the employ of the petitioner, and in consequence were subjected to indignities, intimidation, terrorism and assault.

Since the decision in Kemp *v.* Division No. 241 Assn., *supra*, there was submitted to and passed upon by the Appellate Court of Illinois for the First District the case of Phillip Henrici Co. *v.* Alexander, 198 Ill. App. 568, dealing with a situation similar to the one in the case at bar. There was in that case no strike by the employees, but an effort was made by labor organizations (waiters' unions), on their own initiative, to force the Henrici Company, the employer, to establish and adopt a minimum wage, change the working conditions of the waitresses, and accept the principle of the closed shop by entering into an agreement with the labor organization. The waitresses employed by the Henrici Co. were non-union waitresses, were satisfied with their wages, with their work and with their working conditions, and had declined to leave the employment of the Henrici Co. The Henrici Company declined to enter into an agreement with the labor organizations for a closed shop, refused to establish a minimum wage, but expressed its willingness that the waitresses employed join any union if they chose to do so.

Upon the refusal of the Henrici Company to enter into the agreement proposed by the unions,

a strike was called on the restaurant of the Henrici Company. All of the waitresses employed by the Henrici Company, however, continued with their work as before. Thereupon the waiters' unions proceeded to picket in front of the Henrici restaurant, walking back and forth from a point about twenty-five feet east to a point about the same distance west of the restaurant, and saying to each other so that they could be heard by the passers-by: "There is a strike on at Henrici's." "We want $8 for six days work." "Don't eat under police protection," and words of similar import.

A bill was filed by the Henrici Company to enjoin the picketing, and a cross bill was filed by the defendants. The complainant prayed for an order enjoining the defendant, among other things, from "unlawful hindering, obstructing or interfering with the business of the complainant, from interfering with its employes by intimidation, insults or threats, from printing or publishing any printed matter calling attention to the fact that complainant's business is unfair and not unionized, or that a strike is on; from patrolling in front of or adjacent to the restaurant, etc." The Court on final hearing dismissed the cross-bill and granted the complainant an injunction as follows:

> "That the defendants to the original bill and each of them and their attorneys, solicitors, agents, servants and associates and each and every of them be enjoined and restrained from unlawfully hindering, obstructing or interfering with the business of the complainant, Philip Henrici Company, or its employees, by any act of violence or intimidation or by picketing or patrolling the street in front of or in the alley in the rear of complainant's place of business at 67 to 71 West Randolph Street, in the City of Chicago, Cook

> County, Illinois, *in such a manner as to intimidate, threaten or coerce any person or persons from entering or who may desire to enter said premises for the purpose of patronizing the complainant, or for any lawful purpose whatsoever*" (italics ours).

An appeal was prosecuted from the injunction order. The Appellate Court (page 575) said as follows:

> "The principal controversy, however, in this case, is as to the right of the defendants to picket complainant's place of business in the manner shown by the evidence. *The complainant contends that, under the law of this state, there is no such thing as peaceful picketing, and that under the law and facts in this case, the picketing should be enjoined without qualification.* In support of its contention numerous cases are cited. Reliance, however, is placed chiefly on the case of A. R. Barnes & Co. *v.* Chicago Typographical Union, 232 Ill. 424. On the other hand, the defendants contend *that peaceful picketing is not unlawful; that no act of violence was committed by any of the pickets* (*this is conceded by the complainant*), *and that therefore the bill should be dismissed for want of equity.* In support of their contention, the defendants cite the cases of Kemp *v.* Division No. 241, 255 Ill. 213; and Iron Moulders' Union *v.* Allis-Chalmers Co., 166 Fed. 45." (Italics ours.)

The Court, after reviewing the various decisions decided as follows (page 579):

> "The decree enjoins picketing and patrolling the complainant's place of business and then qualifies the same by the following language: '*In such a manner as to intimidate, threaten or coerce any person or persons from*

> *entering or who may desire to enter said premises for the purpose of patronizing the complainant, or for any lawful purpose whatsoever.'* In this qualification the court erred. We are of the opinion that under the facts in this case, the manner of picketing as shown by the evidence was not justified and should be enjoined. The decree will, therefore, be modified by *striking therefrom* the following words: *'In such a manner as to intimidate, threaten or coerce any person or persons from entering or who may desire to enter said premises for the purpose of patronizing the complainant, or for any lawful purpose whatsoever,'* and as so modified the decree of the Circuit Court is affirmed." (Italics ours.)

It will be noted that the Appellate Court of Illinois in reviewing the cases on the subject, gave special consideration to the case of Barnes *v.* Typographical Union, *supra,* on one side of the proposition and to the case of Kemp *v.* Division No. 241, *supra,* and Iron Moulders Union *v.* Allis-Chalmers Company, *supra,* on the other side, and upheld and reaffirmed the rule laid down in Barnes *v.* Typographical Union, *supra,* as the law of the State of Illinois on the subject in question.

We are not advised of any other case decided in Illinois since the Henrici case, and the law as laid down in Barnes *v.* Typographical Union, *supra,* still stands as the rule in Illinois upon the subject in question entirely unmodified and unreversed.

We confidently contend that the decision in Kemp *v.* Division No. 241 Ass'n., *supra,* in no way modified or overruled the Illinois Rule as set forth in the decisions of the Supreme Court of that State hereinabove cited and that on its facts it is entirely inapplicable to the instant case.

III.

Iron Moulders Union v. Allis-Chalmers Co., supra Not Applicable or Authority in This Case.

The strike on the petitioner's plant, of the "Central Trades Council" and its purpose as proved were clearly contrary to the statutes of the State of Illinois and contrary to the law of that state as established by the decisions of its Supreme Court.

The Circuit Court of Appeals saw fit to ignore and disregard these statutes of Illinois and decisions. It undertook to decide this case upon the authority of Iron Moulders' Union *v.* Allis-Chalmers Company, *supra.* That case we insist is not authority in support of the decision of the Circuit Court of Appeals nor properly applicable to the instant case, and that the cases cited in support of the rule there laid down, deal with an entirely different class of cases than the case at bar, and do not sustain the opinion of the Circuit Court of Appeals. Indeed, Judge Grosscup, a member of the court deciding Iron Moulders' Union *v.* Allis-Chalmers Company, supra, in a separate opinion demonstrates that the decision there is inapplicable to the instant case and rather prophetically anticipated just such a misconception and misapplication of that decision as has happened here.

In each of the cases cited by the Circuit Court of Appeals in support of its opinion there *existed a controversy between employer and employee;* a strike had been called by the *employees* and *not by any stranger* to the employer, nor by any *outside organization* unauthorized to represent or speak for, the employees.

As matter of fact in the instant case there never was a strike in the ordinary acceptation of the term. There was here a deliberate conspiracy on the part of this Trades Council for reasons and purposes of its own, to strike down the industry of the petitioner; to force and coerce the employees who were satisfied and contented to leave their employment; violate their contracts of employment with their employers; dictate to the petitioner terms and conditions upon which it could employ its men; substitute itself for the employer and the employee as the contracting parties, and, failing to secure more than two of the employees to withdraw from the plant, proceeded to intimidate, assault, beat and injure the employees of the petitioner; and that not being sufficiently effective threatened to destroy the petitioner's plant.

The lexicographers have defined what a strike is, and in every instance the definition proceeds upon the theory that it is bottomed upon a controversy between *employer* and *employee*.

Bouvier's Law Dictionary defines a strike as follows:

> "A combined effort by workmen to obtain higher wages or other concessions from their employers by stopping work at a pre-concerted time."

The evidence in this record shows there was no such act by the workmen and employees of this petitioner.

Black's Law Dictionary, defining a strike, says:

> "The act of a body of workmen employed by the same master in stopping work altogether at a prearranged time and refusing to continue until higher wages or shorter time or some other concession is granted."

The evidence in this record shows that the body of workmen employed by the petitioner did not stop work at a prearranged time or any other time and did not refuse to continue their employment until higher wages or shorter time or other concession was granted.

The Century Dictionary defines a strike to be:

> "A concerted or joint quitting of work by a body of men or women for the purpose of coercing thei. employer in some way as when higher wages or shorter hours are demanded or a reduction of wages is resisted—a joint refusal to work as a coercive measure."

The evidence in the case at bar shows the men did not quit work for the purpose of coercing petitioner; on the contrary it shows the men were contented and without complaint.

In *Iron Moulders' Union* v. *Allis-Chalmers Company, supra*, the controversy arose out of a *strike of the employees* of the Allis-Chalmers Company as a result of a united effort on the part of the members of all foundries unions. And in the separate opinion Judge Grosscup called attention to the differentiation between a case involving a strike of the employees actually pending, as against an effort, without such strike existing, to interfere with business and as occurred in the case at bar. Judge Grosscup says:

> "And it is with respect to this somewhat anomalous relationship that, as I understand it, this opinion speaks; a statement that it seems to me ought to be made to confine the opinion to the actual situation to which it is intended to relate—to differentiate what we say from what might arise in cases where, *neither strike nor lock-out pending*, persuasion is resorted to to induce other employers not to employ given applicants for employment, or to persuade employees not to take

> employment with given employers, *upon which questions we do not, as I understand it, express* any opinion."

Judge Grosscup in this separate opinion defines a strike as follows: "A strike is cessation of work *by employees* in an effort to get for the employees more desirable terms."

The Court will find that in each of the other cases cited by the Circuit Court of Appeals in support of its decision in Iron Moulders' Union *v.* Allis-Chalmers Company, supra, there was an actual dispute between *employer and employee* and *an actual "strike" by the employees.*

In Pope Motor Car Co. *v.* Keegan, 15 Fed., 148, it appears affirmatively that there was a strike by the employees of the Pope Motor Car Company, and the strike was due to a refusal to submit to the dictation of Keegan and Keck, who were officials of the International Association of Machinists, *and that all the defendants in that case except Keegan and Keck had been in the employ of the complainant company, and at the time of the filing of the bill were out on a strike.*

In Karges Furniture Co. *v.* Amalgamated Wood Workers' Local Union, 165 Ind., 421, it appears on April 1, the demands upon the employers not having been complied with, *all the plaintiff's employees but about twenty non-members of the union, each one acting voluntarily in concert with others, and in pursuance of the agreement and vote, quit their employment and left the plaintiff's factory.*

In Everett *v.* Typo Union, 105 Va., 188, it appears:

> "In September, 1905, the Typothetæ finally refused to grant the eight-hour day, and thereupon the Typographical Union instructed the local unions in the different cities of the United States (among them the City of Rich-

> mond) to declare a 'strike' where the eight-hour day was refused; and the appellants, members of Richmond Typothetæ, the owners and operators of printing establishments in the City of Richmond, still refusing to grant the eight-hour day, Typographical Union No. 90, *the employees of appellants, on September 11, 1905, went out on a 'strike'.*"

In Jones *v.* Maher, 116 N. Y. Supp., 180, it appears that the employer in that case made certain discharges, including five foremen, and it further appears (page 182):

> "*Upon the discharge of the foremen, most of the people working under them left with them at noon, and when Scofield arrived, others, including the defendant Volkman, one of the foremen discharged that day, also left the factory. The discharged foremen and the employees who had stayed out or gone out, some 70 to 90 in all, thereupon held a meeting, and with the aid and counsel of Schofield organized a strike.*"

Gray *v.* Building Trades Council, 91 Minn., 171, was a case of boycott involving a controversy between electrical contractors and engineers and various trades.

Though this case does not involve the questions presented in the case at bar, and therefore is not an authority, yet we find the statement that *a strike must involve a quitting of the service of the employer,* and in the case at bar there was no quitting of the service by the employees of the petitioner because there was no strike by them. As is disclosed by the record, *only two employees left because the Tri-City Central Trades Council had called a strike, and not because the employees either were dissatisfied or struck.*

In re. Ex parte Heffron, 139 Mo., 639, the statement of the facts does not clearly demonstrate the

relations of the parties in the case, but it is disclosed sufficiently from the decree that the case involved the acts of the employees.

In Jones *v.* Van Winkle Gin & Machine Works, 131 Ga., 336, it appears clearly from the statement of the case by Presiding Judge Evans that the action was against persons who were employees of the plaintiff, but who were on a strike. It is interesting to note that the opinion in this case is authority in support of the contention of petitioner, especially as applied to picketing and the manner thereof indicated in the opinion of the court in the case at bar.

Referring again to Iron Moulders' Union *v.* Allis-Chalmers, supra, we submit that the very first paragraph in the opinion of Circuit Judge Baker conclusively establishes the dissimilarity and the inapplicability of that case to the instant case. Judge Baker said (page 48):

> "No Wisconsin statute authorized an unincorporated voluntary association to be sued in its common name. So the objection might have prevailed if it had been seasonably made," citing cases. "But the members could have been reached, of course, either by naming and serving them all, or, if that were impracticable on account of their numbers, by suing some as representatives of all. *The bill treated the unions as representative of their membership;* an individual member filed a verified answer in the names of the unions, alleging that he had been authorized by them so to do; and the case was carried through three hearings (temporary injunction, contempt, final decree) without a suggestion that there was a defect of parties, or rather a defect in the form under which appellee asked to have the membership of the unions brought into court. An objection of this kind will not be entertained on appeal unless it has been first duly presented in the trial court. Barnes

v. Chicago Typographical Union, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. (N. S.) 1018."

It will be observed that the Allis-Chalmers, at whose plant a strike was initiated by the union, in its bill of complaint *recognized the unions as such to be the representatives of its employees and to have authority from its employees to strike, and in that capacity made the unions defendants to its bill of complaint.* Of course, no such situation exists in the case at bar. The difference is vital and this fact in itself should exclude its applicability in the consideration of this case.

On page 49 the opinion proceeds as follows:

> "The record shows that the local unions had a conference in regard to conditions in all the foundries in the city and county of Milwaukee; that they formulated demands respecting wages, overtime, double time on holidays, piecework, weekly pay day, limitation of the number of apprentices, and a joint arbitration board; that these demands were made alike upon all the foundry owners within that territory; and that when the demands were rejected *the union men in all the foundries struck.*"

Here again we find a vital difference between the facts in that case and the facts in the case at bar. There all the union men (employees) in the foundry of the Allis-Chalmers Company, as well as other foundries there, struck. No such state of facts exists in the case at bar, and pertinent is the separate concurring opinion of Judge Grosscup, that, both the reasoning and conclusion in that case should not and was not intended to apply to

> "* * * cases where, neither strike nor lockout pending, persuasion is resorted to to induce

> other employers not to employ given applicants for employment, or to persuade employees not to take employment with given employers''

and

> ''* * * upon which questions we do not, as I understand it, express any opinion.''

In the instant case there was not pending either a strike of the petitioner's employees or a lockout by the petitioner of its employees. The first and only action with reference to the strike was the action of the officers of the Tri-City Central Trades Council, to which none of the employees of the petitioner were parties and of which the employees of the petitioner were ignorant until the hand bills of the Tri-City Central Trades Council were posted and circulated; and followed up by the efforts of the Central Trades Council to win support by withdrawal of the petitioner's employees from petitioner's employment, resulting in the withdrawal of the two men Churchill and Cook.

The Circuit Court of Appeals entirely misconceived and misapplied the decision in Iron Moulders Union *v.* Allis-Chalmers, supra. It gave no consideration to the difference in the facts and the circumstances existing there, and paid no heed to the vital differentiation expressed by Judge Grosscup in his separate opinion.

But even were Iron Moulders Union *v.* Allis-Chalmers, *supra*, applicable to the instant case in its facts and its conclusions, still it was not authority in the instant case, being contrary to the statutes of Illinois and the rule of law in Illinois as established by the decisions in the Supreme Court in Barnes *v.* Typographical Union, *supra*, and other cases cited.

We insist there is involved here a strict rule of property upon which the Supreme Court of Illinois has spoken, and even in equity the Federal courts will respect and enforce the laws of the State where the construction of state statutes and state constitutions are involved (and such are not in contravention of the Federal Constitution) or where a rule of property is involved.

On the bill of complaint in the case at bar, an injunction was granted to protect the petitioner and its property and its right of property, amongst which are, the contractual relationship between its employees and itself; its right to the lawful pursuit of its business and property, free from annoyance, interference and destruction, as undertaken and practiced by respondents; and its right to enforce by injunction and restraint the respondents' violation of Sections 46, 158 and 159 of Chapter 38 of the Criminal Code of the State of Illinois.

IV.

Under the decisions of this Court the rule in Illinois should control the decision in this case.

Counsel for respondents insists that petitioner having sought relief in the Federal Court, the case must be decided by the Federal Court without regard to the statutes and decisions in Illinois. There is no principle or precedent to sustain respondent's position in this regard. The bill was filed in the Federal Court on the basis of diversity of citizenship. In selecting the Federal Court as its forum, the petitioner waived none of its rights of protection under the laws of the State of Illinois whether established by statute or by decisions of the Supreme Court. The facts set up

in the bill of complaint and proved at the hearing probably conveys some indication of the reason for petitioner's choice of forum. Counsel for respondents said, Why was bill filed in the Federal Court, 100 miles removed from the scene of action? Why did it not proceed in the county in which its plant is located and operated? The Mayor of Granite City, Illinois, where the petitioner's plant is located, an acknowledged socialist and sympathizer with the strike, was appealed to for aid to preserve order, and the appeal fell on deaf ears. No aid was given. The Sheriff of that county was also appealed to for protection against lawlessness and brutality and outrages being practiced by the respondents and their pickets, yet the officer required under the law to give protection to property and person paid no heed to petitioner's request, but, on the contrary, permitted this brutality and violence and thuggery to go on unmolested. It was only after an injunction was served that the criminality and the cruelties of violence and assault were stopped, and have remained stopped ever since the process of the Federal Court came into force and execution.

The petitioner had the legal right to seek the Federal Court as its forum and in doing so neither waived nor lost any rights of property or protection under the statutes and judicial decisions of the State of Illinois.

It is our contention under the decisions of this Court, that the rule of law established by the statutes of Illinois and under the decisions of the Supreme Court of Illinois, must prevail and that any ruling of this court under which it may be claimed, because the instant case is a proceeding in equity, that the Federal Courts may adopt a rule

of their own and may decline to follow the statutes and decisions of a state, cannot be made applicable to the instant case. In support of our contention in this regard we cite first the case of Burgess *v.* Seligman, 107 U. S. 20. This Court said in that case at p. 33 as follows:

> "Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the state, and have all the effect of law, and which it would be wrong to disturb. *This is especially true with regard to the law of real estate, and the construction of state constitutions and statutes. Such established rules are always required by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is.* But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, *or when there has been no decision of the state tribunals,* the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State Courts."

The rule there announced still holds. It has never been changed or modified in any subsequent decisions. The petitioner claimed protection and relief assured to it under the statutes of Illinois and under the decisions of the Supreme Court of the State of Illinois. The subject matter of petitioner's bill of complaint and proceeding involves vested and established rights of property located in Illinois, protection of which was assured and vouchsafed both by the statutes of Illinois and by the adjudications of its Supreme Court, and the right to enforcement of which for the protection of its property and its property rights were enacted and became law in the years 1863 and 1887, respectively. The decisions of the Illinois Supreme Court under which petitioner claims its rights to retain the permanent injunction granted by the District Court, were made as early as 1898. Petitioner's bill of complaint was filed on May 13th, 1914, and final judgment and decree granting the permanent injunction was entered June 9th, 1914.

The State of Illinois had spoken both by statute and by the official pronouncement of its Supreme Court upon the subject matter in question before any of the branches of the Federal Courts in the Seventh Circuit or this court had expressed any opinion, view or judgment.

Under the authority of Burgess *v.* Seligman, *supra,* the state tribunals having spoken and neither the Congress of the United States nor the Federal Courts of the United States having pronounced either by legislation or decision prior to the establishment of petitioner's right under statutes and under state decisions, the laws of the Federal Courts will follow the statutes and decisions of the State of Illinois.

And under the same authority, there being involved here the construction of the statutes of

the State of Illinois, these having been considered and interpreted by the Supreme Court of the State of Illinois, the Federal Courts will proceed in accordance with the State statutes and the interpretation thereof by the Supreme Court.

Under this rule of law, the petitioner is entitled to have its rights judged and decided by this Court in accordance with the provisions of the Illinois statutes and the decisions of the Illinois Supreme Court.

The ruling announced in Burgess *v.* Seligman, *supra*, has been followed by this Court in Butcher *v.* Cheshire Railroad Co., 125 U. S. 555, as also in the case of Gormley *v.* Clark, 134 U. S., 138. The opinion of this Court in Butcher *v.* Cheshire Railroad Co., *supra*, was delivered by Mr. Justice Miller. He said on page 582 as follows:

> "The language of the statute limits its application to cases of trials at common law There is, therefore, nothing in the section which requires it to be applied to proceedings in equity or in admiralty, nor is it applicable to criminal offences against the United States (see U. S. *v.* Reid, 12 How. 361), or where the Constitution, treaties or statutes of the United States require other rules of decision. But with these, and some other exceptions which will be referred to presently, it must be admitted that it does provide that the laws of the several states shall be received in the courts of the United States, in cases where they apply, as the rules of decision in trials at common law.
>
> "It has been held by this court that the decisions of the highest court of a state in regard to the validity or meaning of the Constitution of that state, or its statutes, are to be considered as the law of that state, within the requirement of this section. In Leffingwell *v.* Warren, 2 Black, 599, this court said in regard to the statutes of limitation of a state: 'The construction given to a statute of a state by the highest tribunal of such state is re-

garded as a part of the statute, and is as binding upon the courts of the United States as the text.' * * *

"It is also well settled that where a course of decisions, whether founded upon statutes or not, have become rules of property as laid down by the highest courts of the state, by which is meant those rules governing the descent, transfer or sale of property, and the rules which affect the title and possession thereto, they are to be treated as laws of that state by the Federal courts. * * *

"There are undoubtedly exceptions to the principle that the decisions of the state courts, as to what are the laws of that state, are in all cases binding upon the Federal courts. The case of Swift *v.* Tyson, 16 Pet. 1, which has been often followed, established the principle that if this court took a different view of what the law was in certain classes of cases which ought to be governed by the general principles of commercial law, from the state court, it was not bound to follow the latter. There is, therefore, a large field of jurisprudence left in which the question of how far the decisions of state courts constitute the law of those states is an embarrassing one.

"There is no commmon law of the United States, and yet the main body of the rights of the people of this country rest upon and are governed by principles derived from the common law of England and established as the laws of the different states. Each state of the Union may have its local usages, customs and common law. Wheaton *v.* Peters, 8 Pet. 591; Pennsylvania *v.* Wheeling Bridge Co., 13 How. 519.

"When, therefore, in an ordinary trial in action at law we speak of the common law, we refer to the law of the state as it has been adopted by statute or recognized by the courts as the foundation of legal rights. It is in regard to decisions made by the state courts in reference to this law, and defining what is the law of the state as modified by the opinions of its own courts, by the statutes of the state,

and the customs and habits of the people that the trouble arises.

"It may be said generally that wherever the decisions of the state courts relate to some law of a local character, which may have become established by those courts, or has always been a part of the law of the state, that the decisions upon the subject are usually conclusive and always entitled to the highest respect of the Federal courts. The whole of this subject has recently been very ably reviewed in the case of Burgess *v.* Seligman, 107 U. S. 20. Where such local law or custom has been established by repeated decisions of the highest courts of a state, it becomes also the law governing the courts of the United States sitting in that state."

The case of Gormley *v.* Clark, 134 U. S. 338, arose in the State of Illinois under what is known as "Burnt Record Act," a proceeding, though cognizable under the provisions of the statute in the courts, having chancery jurisdiction, *yet in effect is tantamount to proceedings for ejectment which under the Illinois statutes are initiated and prosecuted as an action at law.*

The constitutional question involved was that the "Burnt Record Act" requiring proceedings thereunder to be in the nature of equity proceedings determinable on the chancery side of the court deprived the defendant in such action of his right of trial by jury, which, under the Constitution of the State of Illinois, was secured to him in actions at law. The Supreme Court of the State of Illinois sustained the right of procedure in equity under the Burnt Record Act, which made no provision for trial by jury.

* * * * * * *

At page 348 the Court speaking through Chief Justice Fuller said:

"Upon the construction of the constitution and laws of a state, this court, as a general rule, follows the decisions of her highest court, unless they conflict with or impair the efficacy of some provision of the Federal Constitution, or of a Federal statute, or a rule of general commercial law. Norton *v.* Shelby County, 118 U. S. 425, 439. And this is so where a course of those decisions, whether founded on statutes or not, have become rules of property within the state; also in regard to rules of evidence in actions at law; and also in reference to the common law of the state, and its laws and customs of a local character when established by repeated decisions. Burgess *v.* Seligman, 107 U. S. 20; Bucher *v.* Cheshire Railroad Co., 125 U. S. 555. Substantially conclusive effect is given to such decisions upon the construction of state statutes, as affecting title to real estate within the state. * * *

"And while the rule is thoroughly settled that remedies in the courts of the United States are at common law or in equity, according to the essential character of the case, uncontrolled in that particular by the practice of the state courts, New Orleans *v.* Louisiana Construction Company, 129 U. S. 45, 46. Yet an enlargement of equitable rights by state statute may be administered by the circuit courts of the United States as well as by the courts of the state; and when the case is one of a remedial proceeding, essentially of an equitable character, there can be no objection to the exercise of the jurisdiction."

There is involved here, right of property in Illinois. As also the construction of statutes of Illinois. And the Federal Courts not having expressed or adopted a rule of law applicable to this case, contrary to or different from that expressed in Illinois by statute as also by the decisions of its Supreme Court, the petitioner contends, this Court will follow and respect the rule of law as established in Illinois as aforesaid.

V.

The rule in Illinois relating to picketing without physical violence is sustained in other states and jurisdictions.

In Atchison, Topeka & Santa Fe *v.* Gee, 139 Fed. 582, the court says, at page 534:

> "But as to one phase of the case there is no denial, but practically a confession, with the alleged and boasted right to practice it. A system of 'pickets' for more than a year, around and near by places to the shops of the company, has been kept up by all the accused and others. The pretense of this picketing is the right to converse with the new employees and persuade them to quit, and the further pretense that they desire to see who are at work. This picketing is done by details of pickets, assigned by others, they taking turn. At all hours when men are going to and from work, morning, noon and evening, the workmen must go through and by pickets, sometimes two, four, six and more at a place. At times the paths and walks are obstructed. At times the pickets are near by, making grimaces, and at times acting as if violence were intended, and at times uttering profanity and vulgarity. *There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity or peaceful mobbing, or lawful lynching. When men want to converse or persuade, they do not organize a picket line. When they only want to see who are at work, they go and see, and then leave and disturb no one physically or mentally. But such picketing as is displayed in the case at bar by the evidence does, and is intended to, annoy and intimidate. The argument seems to be that anything short of physical violence is lawful.* One man can be intimidated only when knocked down. But the peaceful, law-

abiding man can be and is intimidated by gesticulations, by menaces, by being called harsh names, and by being followed, or compelled to pass by men known to be unfriendly. Perhaps such a man may not be a bully, but is frail in size and strength, or he may be a timid man; but such a man is just as much entitled to go and come in quiet, without even mental disturbance, as has the man afraid of no one and able with or without weapons to cope with all comers. The frail man, or the man who shuns disturbances, or the timid man, must be protected, and the company has the right to employ such."

In Beck *v.* Railway Teamster's Protective Union, 77 N. W. 13, the court says, at page 22:

"*It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They are intended to intimidate and coerce.* As applied to cases of this character, the lexicographers thus define the word 'picket': 'A body of men belonging to a trades union sent to watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress.' Cent. Dict.; Webst. Dict. The word originally had no such meaning. This definition is the result of what has been done under it, and the common application that has been made of it. This is the definition the defendants put upon it in the present case. Possibly the decree is specific enough to include picketing, but we deem it our duty to place it beyond controversy."

The court in Gompers *v.* Bucks Stove & R. Co., 221 U. S. 418, said:

"But the very fact that it is lawful to form these bodies (labor unions), with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, can-

> not be met, except by his purchasing peace at the cost of submitting to terms which involve *the sacrifice of rights protected by the constitution;* or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of the government to protect the one against the many, as well as the many against the one."

In Jones *et al. v.* E. Van Winkle Gin and Machine Works, 131 Ga. 336 (62 S. E. 237), the court says:

> "Other cases similar in principle might be added but these are sufficient to illustrate our point, which is that when strikers patrol the streets and approaches of the premises where the strike is in progress, and their number is so great, or their conduct is such, as to intimidate and coerce the employees into quitting their employment, or others from seeking employment, they are guilty of unlawful acts, and will be enjoined from a continuance of them. Sometimes the number of strikers engaged on the patrol may be so great that those intended to be affected by the demonstration will be intimidated by the number of the strikers or their sympathizers without special overt acts. *The courts have repeatedly held that the assembling of strikers around the establishment of the employer in such numbers as will serve as a menace to those employed, or the keeping of patrols in front of or about the premises of the employer, accompanied by violence or any manner of coercion to prevent others from entering into or remaining in his service, will be enjoined."*

Also in Sailors Union *v.* Hammond Lumber Co., 156 Fed. 450 (454), the court says:

> "But it is said that the injunction goes further than the law permits, in that by its lan-

guage it prohibits the appellants from doing that which they have the lawful right to do. By the order of the court the appellants are enjoined 'from in any wise interfering with the crews, foremen, cooks, stewards, seamen, or either of them, or any of the servants or employees of the said steam schooners or steamship or either or any of them, without due process of law; * * * from in any wise interfering with the business of the said steam schooners and said steamship except by due process of law, with the business of complainant or orator of and concerning the said steam schooners and the said steamship; * * * and from in any wise conspiring, colluding or confederating together for the purpose of preventing the said steam schooners and steamship from receiving and discharging freight and passengers.' It is said that under this injunction the appellants would be in contempt if they asked one of their relatives not to go as a passenger on one of the appellee's steamers, or if they made complaint of the violation of navigation laws of the appellee's vessels, or if they exercised their right to discriminate against the appellee by shipping cargo on other vessels than those of the appellee. The language of the injunction, however, is to be interpreted in the light of the allegations and prayer of the bill, and these may make an otherwise indefinite order sufficiently specific. (Hamilton *v.* State, 32 Md. 348.) It is the acts set forth in the bill that the appellants are enjoined from doing."

Stephen *v.* Ohio State Telephone Co., 240 Fed. Rep. 759. See pages 769, *et seq.* And having reference to what may fairly be defined as "peaceful" and "lawful" action, the Court submitted the following inquiries:

> "What constitutes peaceful picketing may be answered by any fair-minded man, if this question is asked, 'Would this be lawful if no strike existed?'

"We accept this as a very good test and apply it to the concrete questions of fact arising in this case, as propounded in the several informations, with conclusions certain to come to every 'fair-minded man.' Suppose no strike were in progress—

"Would it be lawful for one or more men to use offensive, abusive, insulting or threatening language to another or others—for one to call another a 'rat,' a 'scab,' a 'thief,' an 'outcast' or by any other name commonly accepted as offensive or degrading or calculated to provoke the other to break the peace in resentment?

"Would it be lawful for one man or more to take station adjacent to the place of rent, lodging, or work of another or others, and there, by gesture, language, or otherwise, convey to the other insult or threat?

"Would it be lawful for one or more men to force his or their talk upon the unwilling ear of another—to compel him to listen against his will?

"Would it be lawful for one man or more to persistently follow another to and from his work, to his home or lodging and about the city, forcing upon him unwillingly their presence, without occasion other than to unmistakably suggest to him their hostility unless he meets their views?

"Would it be lawful for one to photograph another against his will, especially under circumstances which indicate unfriendliness to be the spirit, and a hostile use of the photograph to be the object?

"Would it be lawful to slink upon an unsuspecting man, inoffensively gazing into a shop window, and deal him a blow—to step from the hiding of an alley to trip a lady, and then to strike her escort as he stoops to her assistance?

> "These questions are formulated upon the testimony produced in open court, because of which attachments were issued under the law, resulting in the filing of informations against which counsel for respondents has presented the motions we are considering."

In the case of Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., 263 Fed. Rep., 192, the Court, dealing with the subject of picketing, said on page 202 as follows:

> "The picketing in question, therefore, presents a not unusual, but, in the judgment of this court, the always unlawful, situation of persons who stand in no special relationship to an employer—persons who have no privileges not common to all men—attempting to interfere with the business of such employer by propagandic activities directed against his working force, or his product, or both. We are aware that a notion is widely entertained that any employer may be organized against by any body of persons, with a view to affecting the manner in which he transacts his business; but such an impression is not, by any means, justified as broadly as it is held. One may freely choose the manner in which he will conduct a lawful business, accountable only to the police power of his community, and to him is given freedom of contract for employment therein. If he and his employees are in contractual relationship respecting terms and conditions of employment opportunity is not lawfully given to others to interfere. Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, and Eagle Glass & Mfg. Co. *v.* Rowe, 245 U. S. 275, 38 Sup. Ct. 80, 62 L. Ed. 286."

See also Kinloch Telephone Co. *v.* Local Union No. 2, 265 Fed. Rep., 312, and note the following language of the Court at page 317:

> "These provisions, of course, do not confer any right to assemble about or to picket the shop or place of business of any former employer under such circumstances, or in such numbers as to menace peace or produce intimidation by reason of the very fact of numbers. Neither does it permit any striker, or any person acting in concert with any striker, to use physical force or intimidation of any sort, or abuse, or duress, or any threat of physical force, either to the employer, or to the employees who are working, or to persons who are seeking employment of the employer, or to persons who have business, or who desire to transact business, with the employer. So much, I think, is clear from the provisions of the act itself, because, plainly the test therein of what may be done is what any ordinary citizen would have been permitted to do if no labor dispute existed. Stephens *v.* Telephone Co. (D. C.) 240 Fed. 759; Duplex Co. *v.* Deering (D. C.) 247 Fed. 192.
>
> "'Peacefully,' as used in this act means peacefully in the strict sense of that word; for it will be noted that the words 'peacefully' and 'lawfully' run as red threads through the very warp and woof of this act. Surely no persons can be said to act peacefully, when they crowd the streets, sidewalks, or alleys near to or adjacent to the shop or place of business under their displeasure and, though silent, threaten and intimidate by numbers."

VI.

Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, and similar cases sustain petitioner's contentions.

The instant case comes within the decisions of this Court rendered since the decision of the Circuit Court of Appeals. The law as now established by this court clearly entitles the petitioner to retain the injunction granted by the district court in the form fixed in the final decree and unmodified in manner directed by the Circuit Court of Appeals.

The respondents not only have been guilty of violation of the statutes and the laws of the State of Illinois as above demonstrated, but have been guilty of a clear invasion of the rights and property of the petitioner as decided by this Court in the Hitchman and other cases. The respondents for an unlawful purpose sought and proceeded to interfere with the relationship between the petitioner and its employees. They sought to force and coerce petitioner against its will to make terms and conditions of employment contrary to the existing agreements and contracts between itself and its employees. The respondents entered into and sought to carry out a deliberate conspiracy to force the employees of petitioner, who were satisfied, contented and without complaint either as to wages or conditions of labor, to abandon their employment, to violate their contracts and thereby force the establishment of a new basis of employment between the petitioner

and its employees. In this conspiracy the respondents neither represented the employees nor were they authorized to speak for the employees. They were strangers to both and gratuitous meddlers and interlopers in a situation that was tranquil and contented and in which they had no interest.

The case decisive of the instant case is Hitchman Coal & Coke Co. *v.* Mitchell, *supra.*

In that case there was not even present the horrible state of brutality and lawlessness existing and proved in the case at bar. In that case this court holds with the District Court in the case at bar that picketing and persuasion unaccompanied by force under the circumstances in that case as well as in the case at bar, are not permissible and should be enjoined and says at page 257:

> "Another fundamental error in defendant's position consists in the assumption that all measures that may be resorted to are lawful if they are 'peaceable'—that is, if they stop short of physical violence, or coercion through fear of it. In our opinion, any violation of plaintiff's legal rights contrived by defendants for the purpose of inflicting damage, or having that as its necessary effect, is as plainly inhibited by the law as if it involved a breach of the peace. A combination to procure concerted breaches of contract by plaintiff's employees constitutes such a violation. Flaccus *v.* Smith, 199 Pa. 128; 48 Atl. 894; 54 L. R. A. 640; 85 Am. St. Rep. 779; South Wales Miners' Federation *v.* Glamorgan Coal Co. (1905), A. C. 239, 244, 250, 253; Jonas Glass Co. *v.* Glass Bottle Blowers' Association, 77 N. J. Eq. 219, 223; 79 Atl. 262; 41 L. R. A. (N. S.) 445."

In that case as well as here the court holds the employer is entitled to be protected in the enjoyment of the benefits of any lawful employment contract as against the gratuitous interference of an organization such as the respondent, Tri-City Central Trades Council, and says at page 251:

> "* * * the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This court repeatedly has held that the employer is as free to make non-membership in a union a condition of employment, as the working man is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power. Adair *v.* United States, 208 U. S. 161, 174; 28 Sup. Ct. 277; 52 L. Ed. 436; 13 Ann. Cas. 764; Coppage *v.* Kansas, 236 U. S. 1, 14; 35 Sup. Ct. 240; 59 L. Ed. 441; L. R. A. 1915C, 960. In the present case, needless to say, there is no act of legislation to which defendants may resort for justification."
>
> "The right of action for persuading an employee to leave his employer is universally recognized—nowhere more clearly than in West Virginia—and it rests upon fundamental principles of general application, not upon the English statute of laborers. Thacker Coal Co. *v.* Burke, 59 W. Va. 253, 255; 53 S. E. 161; 5 L. R. A.. (N. S.) 1091; 8 Ann.

> Cas. 885, 886; Walker *v.* Cronin, 107 Mass. 555, 567; Angle *v.* Chicago, St. Paul, etc., Railway, 151 U. S. 1, 13; 14 Sup. Ct. 240; 38 L. Ed. 55; Noice Adm'x *v.* Brown, 39 N. J. Law 569, 572."

To carry on and operate its business, petitioner required, as shown by the record, the services and labor of workers. The petitioner had the legal right to the employment of the work and activities of the men employed by it, and any interferences therewith was an illegal interference and was subject to injunction. The effort of the respondents by "striking" the plant of the petitioner for the purpose of forcing its employees to leave their work and its service, and the interference with the employees, were an illegal effort to secure the violation of the employment contract between the petitioner and its employees, were injurious to the business and the property and the property rights of the petitioner and subject to injunction.

It is not necessary there should be or that there should be proved, time contracts between the petitioner and its employes. Employment at will is sufficient. The petitioner is legally entitled to the employment of his employees under employment contracts at will and to the good-will resulting therefrom. This, too, was decided by this court in the Hitchman case, *supra,* at page 251:

> "Plaintiff, having in the exercise of its undoubted rights established a working agreement between it and its employees, with the free assent of the latter, is entitled to be pro-

tected in the enjoyment of the resulting status, as in any other legal right. That the employment was 'at will,' and terminable by either party at any time, is of no consequence. In Traux *v.* Raich, 239 U. S. 33, 38, his court ruled upon the precise question as follows: 'It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion, and, by the weight of authority, the unjustified interference of third persons is actionable, although the employment is at will.' (Citing many cases.)

"In short, plaintiff was and is entitled to the good will of its employees, precisely as a merchant is entitled to the good will of his customers, although they are under no obligation to continue to deal with him. The value of the relation lies in the reasonable probability that by properly treating its employees, and paying them fair wages, and avoiding reasonable grounds of complaint, it will be able to retain them in its employ, and to fill vacancies occurring from time to time by the employment of other men on the same

terms. The pecuniary value of such reasonable probabilities is incalculably great, and is recognized by the law in a variety of relations. See Brennan *v.* United Hatters (cited with approval in Traux *v.* Raich, *supra*), 73 N. J. L. 729, 749; Brown *v.* Honiss, 74 N. J. L. 501, 514, *et seq.*; Jersey City Printing Co. *v.* Cassidy, 63 N. J. Eq. 759, 767; Walker *v.* Cronin, 107 Massachusetts, 555, 565-566; Moran *v.* Dumphy, 177 Massachusetts, 485, and cases there cited; L. D. Wilcutt & Sons Co. *v.* Driscoll, 200 Massachusetts, 110, 117, etc."

The Hitchman case also holds as contended for here that the right to strike is in the employee and not in an outside organization, and that the difference in rights in that regard is fundamental. See page 252:

"The case involves no question of the rights of employees. Defendants have no agency for plaintiff's employees, nor do they assert any disagreement or grievance in their behalf. In fact, there is none; but, if there were, defendants could not, without agency, set up any rights that employees might have. *The right of the latter to strike would not give to defendants the right to instigate a strike. The difference is fundamental.*"

No expression could more concretely and more aptly fit the instant case. The respondents, as proved beyond peradventure, both by admission and by proof, were not employees of the petitioner. The Tri-City Central Trades Council Com-

mittee did not come as employees or as the representatives of employees. The employees had no disagreement or grievance, and the respondents were neither authorized nor requested to present to the petitioner a grievance that did not exist. The interference of the respondent was purely gratuitous and unwarranted.

The purpose of the respondents in the case at bar was very much like that found to have been the purpose of the defendants in the Hitchman case, as indicated by the following language in the opinion there, page 233:

> "To cause your orator's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until such time as your orator shall submit to the demand of the union that it shall unionize its plant, and having submitted to such demand unionize its plant by employing only union men who shall become subject to the orders of the union, etc."

and here the Tri-City Central Trades Council sought to force and coerce the petitioner into paying a different and higher wage to its employees than was agreed between itself and its employees; a higher wage than the employees themselves asked for and were satisfied with; and if the change in wage was not made, the employees to be prevented from working and be forced to break and violate their contracts with the petitioner; the plant of the petitioner to be shut down, and if necessary brutality and terrorism practiced against the employees and if need be the property of the petitioner to be destroyed.

VII.

The law as announced in the Hitchman case is supported in other states and jurisdictions.

There are many cases in different states and jurisdictions similar in import and circumstances to Hitchman Coal & Coke Co. *v.* Mitchell, *supra.* We call attention to some of the cases, though it would seem unnecessary to do so.

See the case of Old Dominion Steamship Company *v.* McKenna, 30 Fed. Rep. 48, which was an action at law to recover damages from the Longshoremen's Union, which interfered with the business of the steamship company. The court said (page 49):

> "I have carefully considered the elaborate arguments of counsel, and examined the numerous authorities referred to. For lack of time, I can only state my conclusions:
>
> "1. All the material averments are either stated positively, or the source of information is sufficiently indicated.
>
> "2. The facts stated in the complaint and affidavit constitute a legal cause of action against all the defendants, for the actual damages suffered, for the following reasons:
>
> "(a) The plaintiff was engaged in the legal calling of a common carrier, owning vessels, lighters, and other craft used in its business, in the employment of which numerous workmen were necessary, who, as the complaint avers, were employed 'upon terms as to wages which were just and satisfactory.'
>
> "(*b*) *The defendants, not being in plaintiff's employ, and without any legal justification, so far as it appears—a mere dispute about wages, the merits of which are not stated, not being any legal justification—procured plaintiff's workmen in this city and in southern ports to quit work in a body, for the*

purpose of inflicting injury and damage upon the plaintiff until it should accede to the defendants' demands, and pay southern negroes the same wages as New York longshoremen, which the plaintiff was under no obligation to grant; and such procurement of workmen to quit work being designed to inflict injury on the plaintiff, and not being justified, constituted in law a malicious and illegal interference with the plaintiff's business, which is actionable."

United States *v.* Haggerty, 116 Fed. Rep., 510 (C. C. W. Va., 1902):

The Guaranty Trust Company of New York filed its bill against Haggerty and others, including Mary, alias Mother, Jones, some of whom are citizens and residents of the State of Pensylvania, Illinois, Ohio and West Virginia, asking that the defendants be restrained

> "from entering and trespassing upon the lands and property of the Clarksburg Fuel Company, and to restrain them from going on or about the said company's tipples, tracks, or other property, together or individually, so long as they are not in the employment of the said company for the purpose of unlawfully preventing said company's employees in engaging and remaining in its employment; that the defendants, and each of them, be enjoined and restrained from assembling, congregating, or camping at or near the plant, mines and places of business of the said company's property, or at or near the residences of the said employees, and the paths and roads traveled by the said employees in going to and returning from their work, for the purpose of preventing the employees of the Clarksburg Fuel Company from entering into or continuing in said company's employment by intimidation, threats, or otherwise, whether by physical force or otherwise, and

whether by actual threats or otherwise to the person, property, or families of the said employees; that they be restrained from unlawfully interfering with the management of the business of the company; that the defendants, their confederates and their associates, be, each and all of them, enjoined from asembling together in camp or otherwise, near the mines of the company, or near the residences of its employees, whereby they would be disturbed, alarmed or intimidated from working in the mines, and preventing them from passing to and from their houses to the mines, or from doing any personal injury to the person of the employees of the said company or others who are desirous of entering into or remaining in its employment, or interfering in any unlawful way with any person who desires to go into and remain in said company's employment, and from visiting the houses and places of abode of the persons who are in the employ of the company, who are desirous of remaining in the employment of the company, for the purpose of preventing them by threats, menaces, or actual injury to their person or their property, or to the members of their family."

The Clarksburg Fuel Company was the owner of a large number of mines and mining plants, and also owned in fee simple several thousand acres of coal lands and leased almost as many acres more. It was engaged in mining coal and manufacturing coke and shipping the same to the open market in the United States. Its production was immense and its customers resided in all parts of the United Staes.

There was a general strike in the anthracite regions of the State of Pennsylvania, in which a large number of persons were involved—said to be more than 100,000. Those at the head of the organization known as the United Mine Workers

of America announced their intention to cause or create a strike among the miners of the soft coal regions of the United States, more particularly in the State of West Virginia, where the Clarksburg Fuel Company produced its coal, *not because of any grievance against the Clarksburg Company, but for the purpose of aiding the strike prevailing in the State of Pennsylvania, and to prevent the shipment of coal to localities that had been theretofore supplied with coal from the anthracite regions in the State of Pennsylvania.*

For this purpose the various defendants, including Mother Jones, who were known as "organizers," "agitators," and "walking delegates," representing the United Mine Workers of America, came into West Virginia for the purpose of agitating strikes among the employees working for various coal companies, particularly the Clarksburg Company. To that end the defendants Haggerty and Mother Jones addressed various meetings composed in part of coal miners, and thereby attempted to inflame and excite the hatred and animosity of miners towards the proprietors of the Clarksburg Company, as well as others, advised the miners to quit work, and in some instances the miners were actually assaulted by the strikers, and in another instance one of the mines belonging to the Clarksburg Company was attempted to be blown up.

All of the above had a bad effect on the employees of the Clarksburg Company, which tended to intimidate those working in the mines and prevent them from continuing in their work.

The bill charged a combination and conspiracy entered into by the defendants with others to bring about a strike; that as the result of the above agitation and acts of intimidation some of the employees of the Clarksburg Company and

others were induced to strike, although most of them preferred to work and remain in the employment of the company if they could be protected.

A temporary restraining order was entered and served upon the defendants, and the question the court has to consider in the above case is whether or not the defendants violated the court's order, and, if so, determine what punishment should be imposed upon them for its violation.

> "*It is to be observed that a very large portion of the miners in the employ of the Clarksburg Fuel Company do not want, in the language of one of the agitators who is enjoined 'to lay down their picks and shovels and quit work.'* I do not question the right of the employees of this company to quit work at any time they desire to do so, unless there is a contractual relation between them and the employer which should control their right to quit. At the same time I do not recognize the right of an employer to coerce the employees to continue their work when they desire to quit. But can it be said that where a conspiracy exists to control the employees, as in this instance, either by threats, intimidations, or a resort to any other modes usually accompanying the action of strikers, that such action upon their part is not only illegal, but a malicious and illegal interference with the employer's business? The question is its best answer. *While I recognize the right for all laborers to combine for the purpose of protecting all their lawful rights, I do not recognize the right of laborers to conspire together to compel employees who are not dissatisfied with their work in the mines to lay down their picks and shovels and to quit their work, without a just or proper reason therefor, merely to gratify a professional set of 'agitators, organizers, and walking delegates,' who roam all over the country as agents for some combination, who are vampires that live and fat-*

ten on the honest labor of the coal miners of the country, and who are busybodies creating dissatisfaction amongst a class of people who are quiet, well-disposed, and who do not want to be disturbed by the unceasing agitation of this class of people. In the case we have under consideration these defendants are known as professional agitators, organizers, and walking delegates. They have nothing in common with the people who are employed in the mines of the Clarksburg Fuel Company. The evidence in this case shows that their only object and purpose is to get the people who are in the employment of the Clarksburg Fuel Company to go out upon a strike, as it is termed, for the purpose of compelling the owners of the mines to advance an increase in their wages. It discloses that the miners in the Pinnickkinnick mines are making an average of $4 a day in excess of their legitimate expense, many of whom have worked in foreign countries for less than a half a dollar a day. The defendants in this case are not laborers in the mines, and have no connection with them whatever. Their mission here is to foment trouble, create dissatisfaction among the employees in coal mines, producing strikes, which tends greatly to damage and injure the business of the employers. In this case there is no dissatisfaction among the large number of the miners. *Only a small part of them have quit the mines from fear of intimidation, threats and violence, but those remaining in the mines say they will quit work unless they are protected against the threats of these agitators and organizers. The strong arm of the court of equity is invoked in this case, not to suppress the right of free speech, but to restrain and inhibit these defendants, whose only purpose is to bring about strikes, by trying to coerce people who are not dissatisfied with the terms of their employment, which results in inflicting injury and damage to their employers, as well as the employees.*

> "It is apparent that, if these agitators are permitted to interfere with the orderly, well-disposed miners who are anxious to work, and contented with the wages they receive, in the end this contented class of miners would, through fear, intimidation, as well as threats, be induced to throw down their shovels and picks, and cease to work in the mines, whereby the Clarksburg Fuel Company would be greatly damaged. Not only would it be greatly damaged, but it would be prevented from fulfilling its contracts for the future delivery of the product of its mines. The right of a citizen to labor for wages that he is satisfied with is a right protected by law, and is entitled to the same protection as free speech, and should be better protected than the abuse of free speech, in which the organizers and agitators indulge in trying to produce strikes."

Casey v. *Cincinnati Typographical Union No. 3*, 45 Fed. Rep. 135 (C. C. Ohio, 1891):

Casey was the proprietor and publisher of the Commonwealth, a daily and weekly newspaper published at Covington, Kentucky. He filed his bill to restrain the defendant, which is a corporation organized as a trades union or labor organization, composed of typesetters and printers, and certain individual defendants are the officers and managing agents of said Typographical Union from boycotting the complainant and his newspaper.

The defendant, Typographical Union, demanded that complainant unionize his office, that is to say, publish and conduct his paper according to the dictates of the Typographical Union, not only as to the method of publication, but wages to be paid his employees, and employ only such persons that met the approval of the Typographical Union, and discharge certain persons then in complainant's employ.

The complainant refused to comply with said demands, whereupon the defendants all conspired to and did put into execution a very successful boycott of complainant's paper, the various details of which were elaborately set forth in complainant's bill of complaint. The demands of the defendant, Typographical Union, which, if complied with, would have necessitated the discharge of every printer employed by the complainant and the substitution therefor of persons wholly within the control of the Typographical Union. *There was no trouble between the complainant and his employees. Each was satisfied with the relationships existing between them. There had been no complaint upon the part of the complainant's employees. The complaint came solely from other persons not having any financial interest in the affairs of the papers, none of whose members had any right to expect employment by the complainant.*

The court's opinion was rendered upon a motion for a temporary injunction and is one that is cited favorably in many subsequent authorities. The portion of the court's opinion, however, to which we invite this court's attention is found at page 146 of the report and consists principally of the approval of an opinion of Judge Carpenter of the Supreme Court of Connecticut in the case of *State* v. *Glidden*, as reported in 8 Atl. Rep., 890.

Judge Sage said:

> "In *State* v. *Glidden*, cited hereinbefore, Judge Carpenter, speaking for the Supreme Court of Connecticut, states that the defendants said in effect to the publishing company:
>
> "'You shall discharge men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true, we have no interest in your business; we have

no capital invested therein; we are in nowise responsible for its losses or failure; we are not directly benefited by its success; and we do not participate in its profits—yet we have a right to control its management, and compel you to submit to our dictation.'

"The court said that the bare assertion of such a right was startling; that, if it existed, all business enterprises were alike subject to the dictation and control of those who asserted it, and upon the same principle and for the same reason the right to determine what business men shall engage in, and then and where and how it shall be carried on, will be demanded, and must be conceded to associations of workingmen of the class of those whom it would be necessary to employ. The opinion in this case, although the case itself arose upon an indictment for conspiracy, is a well-considered discussion of the law with relation to boycotting. See, also, *Steamship Co.* v. *McKenna*, 30 Fed. Rep. 48."

State v. *Glidden et al.*, 8 Atl. Rep., 890 (Conn., 1887):

The defendants had been found guilty of a criminal conspiracy, the object of which was (1) to compel the Carrington Publishing Company, against its will, to discharge its workmen, and to employ such persons as the defendants and their associates should name; and (2) to injure and oppress the workmen then in the employ of said corporation, by depriving them of their said employment by first demanding the discharge of said employees, and upon such demand being refused, boycotting the Publishing Company.

Judge Carpenter, speaking for the Supreme Court of Connecticut, expressed the views of the court, as follows:

"Now, if we look at this transaction as it appears on the face of this information, we

shall be satisfied that the defendants' purpose was to deprive the Carrington Publishing Company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendant. The motion was a selfish one—to gain an advantage unjustly, and at the expense of others—and therefore the act was legally corrupt. As a means of accomplishing the purpose, the parties intended to harm the Carrington Publishing Company, and therefore it was malicious.

"The two alleged rights cannot possibly co-exist. One or the other must yield. If the defendants have the right which they claim, then all business enterprises are alike subject to their dictation. No one is safe in engaging in business, for no one knows whether his business affairs are to be dictated by intelligence or ignorance—whether law and justice will protect the business, or brute force, regardless of law, will control it; for it must be remembered that the exercise of the power, if conceded, will by no means be confined to the matter of employing help. Upon the same principle, and for the same reasons, the right to determine what business others shall engage in, when and where it shall be carried on, etc., will be demanded, and must be conceded. The principle, if it once obtains a foothold, is aggressive, and is not easily checked. It thrives on what it feeds, and is insatiate in its demands. More requires more. If a large body or irresponsible men demand and receive power outside of law, over and above law, it is not to be expected that they will be satisfied with a moderate and reasonable use of it."

Jersey City Printing Co. v. *Cassidy*, 53 Atl. Rep., 230 (N. J., 1902):

The Jersey City Printing Company filed its bill asking for an injunction against Cassidy and others.

Vice-Chancellor Stevenson in his oral opinion concedes that an employer has a right to arbitrarily "dictate" to his employees in regard to matters in respect of which their conduct ought, according to correct social and ethical principles, to be left entirely free. Likewise employees with certain limitations may dictate how their employer shall conduct his business, so long as the dictation of either is backed up only by a threat of an association of the relations of employer and employee, hence, he holds that employees may inform their employer that unless he does certain things to their liking they will "strike."

At page 232 of the report the court says:

> "But the difficult case presents itself when the workmen in combination undertake to interfere with the freedom of action on the part of other workmen who naturally would seek employment where they, the workmen in combination, desire and intend that no man shall be employed excepting upon their terms. The difficulty is in perceiving how molestation and annoyance, not of the employees of a complainant, but of persons who are merely looking for work, and may become employees of the complainant, can be erected into a legal or equitable grievance on the part of the complainant. But the difficulty is still further increased where the possible employees make no complaint to any court for protection, and the conduct of the molesting party does not afford a basis which the ancient common law recognized as sufficient to support an action of tort on their behalf, such as for an assault and battery, or a slander. Abusive language is not necessarily actionable at common law. If to call a man a 'scab' in the street, or to follow him back and forth from his home to his place of employment, was formerly not actionable on behalf of the victim of this petty annoyance, the problem is to understand how one who is merely the vic-

tim's possible employer can complain either at law or in equity; there being no actual contract for service, but only a potential one, interfered with."

Again at 234 of the report the court says:

"I think it is safe to say that, all through this development of strike law during the last decade, no principle becomes established which does not operate equally upon both employer and employee. The rights of both classes are absolutely equal in respect of all these 'probable expectancies.' An operator upon printing machines has the right to offer his labor freely to any of the printing shops in Jersey City. These shops may all combine to refuse to employ him on account of his race, or membership in a labor union, or for any other reason, or for no reason, precisely as twenty employees in one printing shop may combine, and arbitrarily refuse to be further employed unless the business is conducted in accordance with their views. But, in the case of the operative seeking employment, he has a right to have the action of the masters of the printing shops in reference to employing him left absolutely free. *If, after obtaining or seeking to obtain employment in a shop, the master of that shop should be subjected to annoyances and molestation instigated by the proprietors of other printing shops, who combine to compel, by such molestation and annoyance, this one master printer, against his will and wish, to exclude the operative from employment, this operative, in my judgment, would have a right to an action at law for damages, and would have a right to an injunction if his case presented the other ordinary conditions upon which injunctions issue.*"

Frank v. *Herold*, 63 N. J. Eq., 443; 52 Atl., 152, 1901:

A bill was filed against upwards of eighty defendants, asking an injunction to protect the complainants from an alleged conspiracy among the defendants to prevent certain operatives of the complainants from continuing to work for them.

From the statement of facts and opinion of the court the facts do not clearly appear. There is no doubt, however, that the complainant was the owner of what is known as the "Greater Barnert Mill," in Paterson, New Jersey, and the defendants were endeavoring to persuade various women employees from continuing in the employ of complainant.

The court says:

> "*The right of a master to have a servant continue in his employ without molestation or enticement by any third party is a property right, so recognized by the law, and well within the rule laid down by Vice-Chancellor Green in Barr* v. *Essex Trades Council*, where he shows that the right of a man to carry on his business is a property right."

Charles L. Flaccus v. *W. J. Smith, et al.*, 199 Pa., 128:

This was a case in which the facts very closely resemble the facts in *Hitchman Coal & Coke Co.* v. *Mitchell, supra.* It involved an effort by the American Flint Glass Workers' Union, affiliated with the American Federation of Labor, to compel and induce the complainant's employees to break their covenants or agreements not to become members of the union or connect themselves with the same, with the object of breaking down complainant's factory as a non-union factory either by preventing the operation of complain-

ant's works or compel joining the union. The court says:

> "*This is not a controversy between the employer and his employees, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor, and seeking to induce the apprentices of the employer to violate the terms of their indentures with him.* No question is here raised by the employer as to what his employees may or may not do, and the complaint sets forth no misconduct by them for which relief is asked. The appellants, outsiders, having no connection with the business of the appellee, are charged with enticing and endeavoring to entice the young men employed by him to violate the covenants of their apprenticeships with him, and protection is prayed for against the threatened ruin of his business, as found by the court below.
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> * * * * * * *
>
> "The appellee had an unquestioned right, in the conduct of his business, to employ workmen who were independent of any labor union, and he had the further right to adopt a system of apprenticeship which excluded his apprentices from membership in such a union. He was responsible to no one for his reasons in adopting such a system, and no one had a right to interfere with it to his prejudice or injury. Such an interference with it was an interference with his business, and, if unlawful, cannot be permitted. The court found that the interference was injurious to him, and if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity."

VIII.

Brutality and bludgeon the form of picketing and persuasion practiced by respondents.

In this case the conduct of the respondents conspirators was so violent in its lawlessness, so brutal in its practice, that it comes within the class of cases requiring and justifying injunction because of the resort to intimidation, physical force and destruction. That the opinion and decision of the Circuit Court of Appeals should not in any happenstance fashion mislead this court into the thought or idea that this case involves interference and restraint only by peaceful picketing and peaceful persuasion, and to demonstrate to this court that a modification of the injunction such as was decreed by the Circuit Court of Appeals, not only is unjustified from the facts and proof in the case, but if adhered to, *would encourage and assure an immediate resumption of the force and violence practiced when interrupted by the restraining order of the District Court*, we bring to the attention of this court the evidence of brutality and thuggery which forced resort to the courts for protection.

As before adverted, the Circuit Court of Appeals in a rather colorless fashion did find that there was justification for the injunction against intimidation and force. Let us see what the evidence in the record is in support of the findings of the District Judge and in proof of the respondents' resort to the bludgeon as a means of peaceful persuasion and peaceful picketing.

A. Walcher testified as follows:

> "As works manager threats had been carried to me by third persons from the pickets

to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end. * * * (Printed Rec., 24.)

"Other men besides the defendant were engaged in picket duty around the plant. These pickets would stand around in groups of eight or ten, two and three groups. Some of these I recognized as machinists, others as workmen that had worked around Granite City at various times, various outsiders." (Printed Rec., 26.)

Steven Hafner testified as follows:

" * * * On April the 30th as I came to work to the plant I go down on Neideringhaus avenue alongside of the Wabash station. I saw Churchill, Gerlich, and Cook on Neideringhaus avenue that day. They was out on the walk about ten feet away from the track from the station there and jumped in front of me. They didn't say nothing, only Tom Churchill say, 'You can't go this way.' And I said, 'Yes, I can.' And he jumped on me and beat me up; I didn't see the two fellows coming behind; Tom Churchill jumped in front of me and stopped me and I didn't see the other two men come at all, and all at once I got hit in the face and all over, and then I went over to the cars; I couldn't hardly stand and braced up in a car; the time I was going over to the cars one fellow his name is McKenny he was going to get after me again and I said I wouldn't go into the plant; I was going back home; I was going to brace up over in the cars. I went home; couldn't go into the shop any more. I was feeling awfully dizzy all day long; still dizzy yet sometime on account of them hitting me. * * * (Printed Rec., 26.)

"Churchill, McKenny and Cook all hit me, they knocked me down. They hit me in the face; I don't know where they did hit me;

couldn't see fast enough how they did come on me, then I went between the cars and braced up a little and then I went back home." (Printed Rec., 27.)

Frank Hedstrum testified as follows:

" * * * On May 8th I saw them on Neideringhaus avenue by the Wabash depot. A bunch of about fifteen or twenty of them came in the direction of four or five of us calling us vulgar names and we went on past the depot on the left hand side of the shop on Neideringhaus avenue. The men at the depot followed us and commenced assaulting us. One of them hit me on the hand with a rock. As a result I was in a dazed condition and had to have a doctor care for my hand. On May 18 Ira Crawford and myself were walking to work about five o'clock in the evening.

"We were coming down the street when we were intercepted by some men at the corner of 21st and B streets, about 4½ blocks from the plant. There were about twenty-five men in the bunch. Some man whose name I do not know said, 'Don't go in to work.' And the next thing I remember I found myself getting up and nobody around, except some school children and Crawford. Crawford was getting up from the ground where he was knocked unconscious as well as myself, and this gang of twenty-five men were all gone. I was rendered unconscious by being struck over the head with some blunt instrument. The right side of my face was swollen from being hit with something on the jaw, it was all swollen and sore down to my collar bone. My head was swelled and sore also; there was a knot about the size of a pigeon egg on the side of my head.

"On the morning of May 14 I saw Ted Ishman close to the Wabash depot, he said to me that we would continue going in to work until we got our heads knocked off." (Printed Rec., 27.)

Ira Crawford testified as follows:

"I have been working for the American Steel Foundries about six or seven weeks, running a crane on the night shift. On the morning of May the 8th, as I was coming from work I saw a bunch of about twenty men near the Wabash depot. I recognized Ishman and Dangles in the crowd. The crowd followed us around the depot calling us vile names and the next thing I knew there was a fight come off. They hit us, struck me in the back with something and on the arm, and struck at me at different times.

"On May 18 I left the house about a quarter to five o'clock with Hedstrum. The only man that I recognized in that crowd was Dangles. They jumped on to us and beat me up with a club of some kind; hit me on the head; hit me on the back with a brick and I don't know what else. I was knocked unconscious and my head cut open. I don't think I was unconscious long. When I came to I saw men running near C. street towards town. As a result of this assault I couldn't work for two weeks and was treated by a doctor. My face was cut and my head cut and bruised. My left arm was so I couldn't use it and it still bothers me." (Printed Rec., 28.)

W. C. Quinn testified as follows:

"* * * When I finished my day's work on night of May the 13th I and eight others left the plant about eight minutes to six and walked out Neideringhaus avenue across the track and past the depot. We passed Ted Ishman and Galloway at the depot with four or five other fellows, and they said, 'There they go,' and at the same time Galloway drops his hand and we walked up the street. We walked up the street two or three hundred feet and a gang of men about sixty-five or seventy of them came around the corner from

behind a brick pile. From the other side of the street was about a likewise number; at the head of the bunch on this side of the street was Hartbeck, and just as we got from about twenty feet from the street car track this fellow hit Kelly in the face and at the same time he says, 'There, you scabbing s— of b—; don't let him get away from you'; and I tried to cut across the field and they shillalahed me with bricks and likewise the rest of them. The bunch that was at the station came from behind. I was struck by these brick bats in too numerous places to mention. I was struck mainly on the back and on the side of the left temple, and on the right jaw, also on the arms. I was knocked unconscious for about fifteen or twenty minutes and when I regained consciousness all of these men had disappeared. As a result of this I couldn't perform my duties for the next week and have had a continuous headache ever since. I was never troubled with headaches before.

"On May the 6th I saw Ted Ishman on the corner of Eighteenth street and he told me if we continued to work down there we would get hurt. He said there wouldn't be any of us go in there the following Monday if they had to kill us all. I started sleeping in the plant on the night of the 14th and have slept there up until last Monday. I slept on a board the first couple of nights and then on a cot. I slept in the plant because I didn't like to battle my way through all the time. I was followed continually across the river and on this side of the river, too. On one occasion I was followed by a man whose name I do not know and I caught six different street cars trying to escape and finally I caught a taxicab and got away from him. On the following day I met this same fellow and two others on the corner of Fifteenth and Chestnut streets in St. Louis. This fellow came in front of me and two fellows behind me and just as he got to me he said, 'This is the scabbing b——d,' and struck at me, and the two

fellows from behind rushed up at me and I had to defend myself and I knocked one man down and got the other fellow down and the other fellow ran." (Printed Rec., 29.)

Frank Melton testified as follows:

"I went to work for the complainant on April the 13th, worked about ten days and was off then until the 7th of May when I again went to work. That day I went across Neidringhaus avenue on the south side of the plant to Compton's Restaurant; while I was in there this fellow here (pointing out defendant Gerlich in the court room) come up to me. He was the leader of these fellows. Guess there were twenty of them in there while I was eating dinner and they surrounded me. He came up and commenced to bulldoze me, and said, 'Say, you, don't you know there is a strike on here?' He told me if I didn't stay out of that shop they would beat my damned head off and I sat and eat awhile, and I told them I thought I would quit that night beings they were getting so strong with it, and they kept getting louder all the time and getting closer to me all the time. When I told him I would quit that night, he said, 'You won't do it no such a damn thing; you have seen your last time in that shop. You are quitting right now.' There was a heat to come down in a few minutes; they had me tied up and wouldn't let me in; I was pouring mad. I told them I had a motorcycle in the shop and would have to get that out, so they gave me fifteen minutes to get out of there, and on account of their threatening attitude I was afraid to go back there to work. I went to work and worked one day after that and that night they jumped me in East St. Louis right near by home. I don't know who jumped me. One of them said, 'There is that crane man at Granite City.' One threw a brick but never hit me, and one ran over and knocked me down; don't know who it was, a hammer or

something he had in his hand; hit me in the back and knocked me down; I was laid up for over a week; couldn't use my back, and struck me in the face and I was cut on the arm. This happened about the 14th of May. I don't know who struck me, it was done after dark and I couldn't very well recognize who it was.

"I was satisfied with the terms of my employment and I am willing to work there, but I am afraid to work" (Printed Rec., 30).

William Francis testified as follows:

"* * * When I left the plant on the night of April 29th I saw Tom Churchill about eight feet from the depot with ten or twelve other men; among them was Wm. and C. Thornberg. They were all in the gang together. Churchill said, 'If we didn't stay out in a decent manner they would make us stay out.'

"On the following morning I went to work with Steven Hafner. We met Thornberg and Churchill and they took Steve away from me and kicked him and beat him in the face with their fists and feet, they then ran away.

"I saw the Blacksmith Freddy that morning. I saw him get whipped; knocked down. He come on the north side of the depot and Churchill, the two Thornbergs and three or four other fellows were on the south side. They headed him off around the car and they commenced whipping him and knock him down and beat him. There were about nine or ten of them in the assault. Freddy was unable to work and went home.

"On the 13th of May there was trouble on Neideringhaus avenue about a half a block from the plant. There were nine men with me and I seen a world of men coming three directions. Some from behind the stamping works, south of the stamping works; some was coming north and when we passed by a gang at the depot we were in the middle of the three gangs. They commenced throwing bricks. I recognized two or three standing

around there. Bricks was being thrown so fast I got behind a post. As I was going by the depot I recognized two or three of them. I recognized Churchill, Hartbeck and Galloway. Galloway was at the depot. A bunch of these men came in from behind us after we got past the depot. I saw workmen with me that were struck with bricks. A man got knocked down with a brick; one got hit in the ear with a brick. Mr. Quinn got knocked flat down unconscious. Mr. Patty over there got knocked down. It lasted about ten or fifteen minutes and then the gang run away in different directions. I got behind a post and didn't get a scratch.

"Freddy was about eighty or ninety feet from the works when he was assaulted. Churchill and McKenny assaulted him. I don't know what Freddy said. I was about twenty feet from them. They did not molest me. Freddy didn't strike them.

"Churchill and Hartbeck was in the fight on May the 13th. Don't know how many men were there; there was a world of them. I saw this the two fellows before the big crowd come up there, but the other gangs hadn't met us. And the crowd at the depot came up behind" (Printed Rec., 31).

J. E. Bell testified as follows:

"I am working for the Steel Foundries as a crane man. I was working there on the 13th of May. On leaving our work eight or nine of the workmen went up Niederinghaus avenue together. A bunch of men came from behind the stamping works, one came back of us and one from the side; kind of corralled us, threw bricks and everything at us. I was struck in the back and arms with bricks. About the 8th or 9th of May I had a talk with McKenny. He told us if we didn't quit working they would cripple us so that we couldn't get there the next Monday morning. I have been satisfied with the terms of my employment there at the plant" (Printed Rec., 32).

Edwin Baker testified as follows:

"I run the Royal Hotel in Granite City. I draw my trade mostly from the working people, and some of the employees of the complainant board with me. I know who the colored porter is that works for the complainant, he comes to my place for meals. On May 9th he came to my hotel with an order for two meals from officials at the complainant's plant. I packed them in two baskets and a bucket of coffee and handed them to him. He left my place and in about fifteen minutes came back as hard as he could run; ran in the restaurant and through kitchen where I happened to be. He did not have the baskets with him at that time.

"About three minutes after the porter got there three men came into the place. I didn't know any of them; the spokesman said his name was Harris. He asked me if I was feeding men from the American Steel Foundries. I told him that I was and they told me that if I didn't quit feeding them they would ruin my business and see that I didn't get any more union men" (Printed Rec., 33).

O. P. Floyd testified as follows:

"I know the colored man, the porter at the plant. I sent him to this hotel to get those meals. I saw him coming back to the plant. As he was on the tracks coming to the plant he had the two breakfasts I sent him for in a couple of ordinary market baskets. At this point he was stopped by Churchill, Gerlich and two other men whose names I do not know. They forcibly jerked the baskets away from him and threw them on the tracks and kicked the contents of the baskets over the tracks and broke up the dishes and the negro went back the other way. He didn't come to the plant at all" (Printed Rec., 34).

Valley Crabtree testified as follows:

"I have worked for the complainant continuously since March 29th. On May 8th I left my work about 7:15 in the morning to go home; Hedstrum and Crawford, fellow employees, were with me. As we were going on Niedringhaus avenue near the depot I met a bunch of about fifteen assaulters. I only knew Ishman and Warden in the bunch. They come up in front of us and called us vile names; whether they were addressed to me or not I don't know; never had anything said to me before. They followed us in around the depot and the next I knew Mr. Ishman and another fellow struck me with their fists. The fight started and lasted just a few seconds and the policeman came along and arrested us three employees, Mr. Ishman and another gentleman.

"I had no other trouble. I am a furnace helper in the plant and satisfied with my employment there" (Printed Rec., 35).

Thos. Cantrell testified as follows:

"I am working for the complainant, starting there May the 13th. I left the plant that night about 6:10 o'clock, and when I got down about a half a square from the Wabash Depot it seemed to me there were about two hundred men surrounded us. I recognized one man, Ted Ishman. I saw him throw a brick and strike Mr. Stark with it. Stark was covered with blood; I took him across the street and met four other guys, but I can't identify them; they started hurling bricks at me; some hit me on the back and I made my get-away towards the plant. I stayed in the plant until about 8 o'clock and then four officers escorted us to the Royal Hotel. I went back to work and the next morning and for five or six days slept in the plant. I slept on tables until they got cots" (Printed Rec., 35).

Adolphus Hileman testified as follows:

"I started to work for the complainant along the first part of April and quit working April 25. On the evening of April the 24th I saw quite a crowd; Lamb and Ishman was with them. They asked me to stay out, that there was a strike on there; I told them I would go in and pour the heats and then come out, and a fellow said, 'Go on in and scab then and then we will catch you when you come out.' On the evening of April 24 I was met by Ishman, Holmes and Paddey about six blocks from the plant. They said the machinists called a meeting and decided to get everybody that went in there and knock their blocks off and I had better stay out. Paddey said the machinists would do that; they didn't say they would do it. On April 25 I saw Horace Howard and Harry McKenny. I was on the inside of the fence talking to them through the fence. When I first saw them I was sitting on the water tank by the fence about forty feet from the gate. They told me I didn't do the right thing by staying in there and scabbing; I ought to come out. I quit working there that day because they made those threats and I didn't care to be in the trouble if there was any trouble. I was satisfied with my employment, satisfied with the terms of it and had no trouble with the company at all" (Printed Rec., 37).

Arthur Gordon testified as follows:

"I am working as a craneman for the complainant; started to work on May 6th. On the evening of May 13th as I left my work I saw some of the pickets at the Wabash Depot, and when I got a little closer they started to follow behind us, and some coming up the same side of the street to meet us, and some coming from behind the stamping works, I got knocked down to the ground and they started to kick me with their boots. I don't

know what I was knocked down with; it was from behind. There was a pile of bricks there. I was kicked in the forehead; on my head; had my ribs black and blue and bandaged up for about two weeks. I went to the surgeon of the plant and he bandaged my ribs. I had a big lump on my forehead. I was pretty sore; couldn't hardly breathe at all and was affected for nearly three weeks. After I was assaulted I made for the street car and got on it; they threw a pile of rocks; they didn't hit me, but hit the street car. I don't know any of the names of the men in the bunch.

"Before this I had been talked to by Ted Ishman; he stopped me and told me if I didn't quit going in there they would put me out of commission. I told them I was going to work anyhow, and he said there would be none of us in the plant on Monday. I slept in the plant at nights for about a week. The first two nights I slept on a plank; after that on a cot" (Printed Rec., 38).

Oscar E. Hall testified as follows:

"I am master mechanic at the plant of the complainant and have been since May the 1st, 1913. * * *

"About the 24th or 25th of April I had a conversation with the defendant Lamb. He said to me, 'We don't like the way you have treated our boys down here and we just come down to raise a little hell.' Just before he said this he was with a party of five or six men.

"Question by the Court: If men were unmolested would you have any trouble filling all the places you want? A. I think not.

"Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none." * * * (Printed Rec., 39).

Charles Fortner testified as follows:

"I am working in Alton, but on April 14 worked for the complainant, worked there from April the 6th until April the 25th. I know Holmes, Ishman and Lamb; on the evening of April 23, I was going home, I met them about one hundred fifty feet from the plant. They asked me if I knew there was a strike on and I told them I did not; they told me there was and the best thing was to keep out of there and if I didn't they would make me. Later on I got word if I didn't cease work I would get my head beat off. I quit work on the 25th of April because I was afraid they would carry their threats into execution and beat my head off, and didn't want to get into trouble one way or the other" (Printed Rec., 42).

Fred Stark testified as follows:

"I applied for work at the complainant's plant about four o'clock in the afternoon of May the 13th and started to work on the 14th. As I was leaving the plant about six o'clock on the evening of the 13th I went straight over the tracks to the Wabash depot, turned there and went up that street and started toward the street car; got half way up between the depot and the street car and was surrounded by about two hundred men and somebody got behind me and hit me in the ear with a rock. It busted my ear. I feel the effects at the present time and I believe it is broke. After I was hit I started down the street back of the plant. I didn't know anybody in the crowd only by having them pointed out to me. That red-headed man back there in the court-room I saw there. I don't know his name. He tried to stop me down by the depot as I was coming back. I pulled out my pocket knife and he jumped aside. I left the plant that night between eight and nine o'clock and came back the next morning at four. The regular time to go to work was seven o'clock.

After that night I slept in the plant on a pattern table" (Printed Rec., 42).

Harry McKenny testified as follows:

"I live in Granite City and am a steamfitter and belong to one of these unions. * * *

"Yes, sir, I assaulted one of the fellows there. Churchill stopped him one morning and was talking to him and I come up and asked him where he was working and he said he was going in there to work; I told him to stay away, and he said, 'You G—d d—n son of b——, I will work where I please,' and I hit him. We were standing at the south end of the depot; me, Churchill and some other fellow. I never tried to stop anybody from going into the plant by force. I never assaulted nobody. I talked to them; tried to talk to them in a good way" (Printed Rec., 51).

Is there any doubt as to the full justification of the District Judge in granting an injunction in the broad terms provided in the decree?

I X.

The "Clayton Act", which became law October 15, 1914, is not applicable nor available against petitioner.

On one of the former oral arguments counsel for petitioner, shortly before the close of his argument, was asked by one of the justices, if he had given consideration to the effect of the "Clayton Act" upon the case. Counsel replied that he had not, that the question had not theretofore been raised either in the District Court or in the Circuit Court of Appeals, nor in this court. It being apparent that the "Clayton Act" is being given consideration in this Court in connection with the decision in this case, we will address ourselves thereto, and demonstrate, we believe,

the inapplicability and the unavailability of that act in derogation of any of the rights of the petitioner as claimed herein.

(a) The final decree granting the petitioner a permanent injunction was entered on the *9th day of June, 1914.*

The legislation known as the Clayton Act became law on *October 15, 1914.*

It will be noted that the rights of the Petitioner by final judgment and decree were definitely and formally fixed and vested *before the Clayton Act became law.*

Before discussing the Clayton Act and its general applicability to the facts and law of the case, we desire to present the point that no retroactive effect can be given to the Clayton Act so as to affect the final decree and judgment entered prior to its enactment.

This proceeding is not one involving a relationship between an individual and the federal government or the state government or the public as such, in any way whatsoever. It is a controversy between private parties, namely, the petitioner and the respondents. While it may be contended that legislation subsequent to adjudication in proceedings between public bodies or between an individual and the public, because each one doing business with the federal government or the state government is more or less subject to future legislation affecting the relationship, no such rule can apply in a controversy or proceeding between private parties.

This court passed upon that question in the case of the *State of Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S. 421. The Court says at page 431:

> "Now, we agree, if the remedy in this case had been an action at law, and a judgment

> rendered in favor of the plaintiff for damages, the right to these would have passed beyond the reach and the power of Congress. It would have depended, not upon the public right of free navigation of the river but upon the judgment of the Court. The decree before us so far as it respect the costs adjudged stands upon the same principles and is unaffected by the subsequent law."

That case involved, as the court will note, matters relating to a public improvement constructed and maintained under acts of Congress and therefore involved a controversy between an individual and the federal government, and in that respect differs from the instant case; and yet, even in that case, the Court said at page 431:

> "But it is urged, that the act of Congress cannot have the effect and operation to annul the judgment of the Court already rendered, or the rights determined thereby in favor of the plaintiff. This, as a general proposition, is certainly not to be denied, *especially as it respects private rights of parties. When they have passed into judgment the right becomes absolute, and it is the duty of the Court to enforce it.*"

In the dissenting opinion of Mr. Justice Grier is the following at page 449:

> "I concur with my brother MacLean that Congress cannot annul or vacate any decree of this Court; that the assumption of such power is without precedent, and as a precedent for the future it is a dangerous example."

A final judgment or decree is property just as much as any other form of property. The right of property and the protection thereof is a vested estate and such judgment or decree should not be

subject to subsequent legislation, especially if such legislation involves not only remedies but rights. In this case both are involved.

Suppose there had been no appeal from the final decree in this case and a violation of the permanent injunction had occurred and the defendants charged with such violation were brought to the bar of the Court for contempt, could defendants so charged relieve themselves by pleading in defense the subsequent enactment of the Clayton Act? Can Congress affect or stay the enforcement of a subsisting order, injunction or decree of a Court having jurisdiction of the parties and the subject matter? And, indeed, as applied to the case at bar, can Congress affect the subsisting order, judgment or decree of a Court of competent jurisdiction, having jurisdiction of the persons and subject matter in a suit involving the construction and application of the statutes of the State of Illinois?

Besides, there is nothing in the Clayton Act making the provisions thereof operative retrospectively. Not only is there a presumption that the law was to become operative prospectively but to have it otherwise would require a clear and unmistakable expression of legislative intention to that effect. There is nothing in the Clayton Act to warrant the application or operation thereof, other than prospectively.

In the case of *Memphis* v. *United States*, 97 U. S. 293, this Court said at page 296:

> "In this case the relator recovered his judgment against the city on the 16th of March, 1875. Into that judgment his contract was merged, and it no longer had any legal existence. If, as asserted by Blackstone, the judgment was itself a contract, the remedies for its enforcement, existing at the time when it was recovered, could not be taken away

> either by direct legislation, or indirectly, by repealing the law which gave those remedies. And if the judgment may not be considered a contract of record, still the vested rights it gave to the relator, whatever they were, are equally secure against legislation invasion."

and on page 298 this Court quoting *Fisher's Negroes* v. *Dabbs* (6 Yerg. (Tenn.) 119), said:

> "A distinction between the right and the remedy is made and exists. But where the remedy has attached itself to the right, and is being prosecuted by due course of law, to separate between them and take away the remedy is to do violence to the right, and comes within the reason of that provision of our Constitution which prohibits retrospective, or, in other words, retroactive, laws from being passed, or laws impairing the obligation of contracts."

In the case of *Livingston* v. *Livingston*, 173 N. Y. 377, the New York Court of Appeals involving a similar question said, at page 381:

> "By the decree, in this action, the obligation, before resting upon the husband for the support and education of the children and for the support of his wife, was changed. It, thereafter, was made to rest upon the wife and the decree adjudged that the husband should pay to her a certain fixed sum of money in a certain manner, in lieu of his previous obligation. The judgment defined and created a new obligation on his part and as the amendment of the statute, necessarily, affected the wife's right to compel exact performance and bore upon the obligation, to her possible injury, it was obnoxious to the constitutional prohibition. It would be absurd to call it remedial, as affecting merely a remedy upon the decree. Even then, it would violate a substantial right of the plaintiff. It was, how-

ever, in fact, the impairment of, or interference with a vested right conferred by a final judgment. The plaintiff's protection in the enjoyment of her right under the decree is not, necessarily, referable to the prohibition in the Federal Constitution against the impairment of the obligations of contracts. It is not at all necessary, for the plaintiff's purposes, that the judgment of divorce should be deemed a contract. A judgment is not a contract, in the ordinary sense of an agreement reached between persons, to whose terms their mutual assent has been given, and it is in that sense that the word is used in the Federal Constitution. (*State of Louisiana* v. *Mayor of New Orleans*, 109 U. S. 285.) A judgment creates an obligation of the highest nature known to the law and it is enforceable against the judgment debtor as upon his promise to perform it; but that promise is only implied by law. The obligation is imposed; it is not assumed voluntarily. But a final judgment creates and vests substantial rights, and, if the statute were allowed this retroactive effect, a new stipulation would be imported into it, in effect, that the defendant's obligation might be changed upon showing subsequently occurring facts."

In the case of *Humphrey* v. *Gerard*, 83 Conn. 346, the Court said at page 352:

"The most apparent answer to this contention is found in the fact that the statute is not a retrospective one. The presumption is that statutes are intended to operate prospectively. They should never be construed as having a retrospective effect unless their terms show clearly and unmistakably a legislative intention that they should so operate."

See case of *Strafford* v. *Sharon*, 61 Vt., 126. The Court at page 130 said:

"The Constitution of the United States prohibits the States from passing any *ex post facto* law, or any law impairing an obligation of a contract (Art. 1, Sec. 10); so that if the obligation of the Town Strafford to contribute towards the building and maintaining of the bridge in question rested in contract, the legislature could not pass any law that would release the parties from its performance. It is a distinction thoroughly settled by a substantially uniform course of decisions in this and other states, and in the Federal courts, that while the legislature of a state may make laws affecting the remedy for the enforcement of a contract, altering its character or substituting one remedy for another, yet it cannot, by reason of the Constitutional prohibition, deprive the party of all remedy. If this cannot be done when the right exists in the form of a simple contract, express or implied, much less can it be done when that right has been ascertained and established by the judgment of a court of competent jurisdiction.

* * * * * *

"Nor can it be urged in opposition to the foregoing considerations that there is but the substitution of one remedy for another without involving the impairment of any contract right. Wherein consists this change of remedy? It is in substance, the substitution of one for another party petitionee. The burdened town is now to seek its remedy from the state, while before it was obtained from the benefited town or towns. *But in the case before us the petitionee has already sought and obtained its remedy, in the form of a judgment against the petitioner, under the law as it stood at the time when the action was brought and prosecuted; it has fully perfected its right under the law. Shall the petitionee now be deprived of this established and adjudicated right, and sent back to begin de novo to again establish the same right, but against another party? Clearly this would be uncon-*

stitutional. The same right might, or might not be established, and a substantial similar relief obtained in the end, but the party would be driven to another action, with all its expense, delay and uncertainty, the benefit of the expense incurred in the former proceeding lost to it, and compelled to fight the battle all over again, and against another party, before it could, if successful, in the end reach the same or a similar result as the one already reached in strict accordance with the law as it stood at the time, and by the law made a final settlement of the controversy, save for the periodical review provided for. And when all this was done, it might be that a new law would have been passed, relegating the party to still another remedy." (Italics ours.)

Also Merchants Bank *v.* Ballou, 98 Va. 112 (page 117):

"There can be no doubt that a judgment is such a vested right of property that the legislature cannot, by a retroactive law, either destroy or diminish its value. Murphy *v.* Gaskins, 28 Gratt. 207, 222; Ratcliffe *v.* Anderson, 31 Gratt. 105; Gilman *v.* Tucker, 13 L. R. A. 304 (*N. Y.*).

"In the case last cited, the power of the legislature to pass retroactive legislation affecting a judgment is denied, and, in discussing the subject, it is said: 'We must bear in mind that a judgment has been rendered, and the rights flowing from it have passed beyond the legislative power, either directly or indirectly to reach or destroy. After adjudication, the fruits of the judgment become the rights of property. These rights become vested by the action of the court, and were thereby placed beyond the reach of legislative power to affect.' * * *

"It is, however, contended that the effect of the statute in question is not to impair the validity of the judgment, but only to modify the remedy for its enforcement. In other words, that, though the judgment itself is a

vested right that cannot be impaired or diminished by a retroactive law, yet the lien is not a vested right, but only a remedy provided for enforcing the judgment, which can be taken away by such a law. This position is not tenable. The right to the lien upon the debtor's real estate is, in many cases, the sole inducement to the credit, which constitutes the basis of the judgment. Without the benefit of that lien, guaranteed by the law at the time the judgment is taken, the credit would not have been given.

* * * * * * *

"Judge Christian, in delivering the opinion of the court in the Homestead cases, says: 'Nothing can be more material to the obligation than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which are guaranteed by the Constitution against invasion. The laws which subsist at the time and place of making a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to and incorporated in its terms. It is competent for the states to change the form of the remedy, or to modify it otherwise as they may see fit, provided that no substantial right secured by the contract is thereby impaired. But any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution." 22 Gratt. 288.

In the case of Edwards *v.* Kearsey, 96 U. S. 595, this Court, in our opinion, has already definitely disposed of this question. The subject matter was there fully and elaborately discussed, and Mr. Justice Swayne, in delivering the opinion of the Court dealt with the subject in all its aspects, including the application of the Constitutional inhibition against impairment of contract not only with ref-

erence to the rights under the contract, but also to the remedies flowing therefrom.

In the instant case it may be claimed that the "Clayton Act" only affects the remedy and not the right of petitioner. Any such interpretation in our judgment is erroneous. If the "Clayton Act" is to be considered as having any effect upon the final decree for permanent injunction, then it might be contended there would be an abridgment of the rights of the petitioner flowing from the remedies available to the petitioner under the final decree. But, assuming that the final decree for permanent injunction constitutes a vested right in petitioner (and this we believe cannot be successfully assailed), we insist with confidence that the remedy available to the petitioner on this vested right is one that could not be impaired by the enactment of the "Clayton Act" which became law October 15th, 1914, as against the final decree entered in the case on June 9th, 1914.

This Court, in this case of Edwards *v.* Kearzey, *supra,* in our judgment, definitely decides the inapplicability and unavailability of the "Clayton Act," even insofar as it affects the remedy accruing to the petitioner from its final decree for permanent injunction. On page 600, Judge Swayne said:

> "The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in the view of the law, ceases to be, and falls into the class of those 'imperfect obligations,' as they are termed, which depend for their fulfilment upon the will and conscience of those upon whom they rest. *The ideas of right and remedy are inseparable. 'Want of right and want of remedy are the same thing.'* 1 Bac. Abr., tit. Actions in General, letter B."

On page 601, the Court quoted from Green *v.* Biddle (8 Wheat. 1), and said, touching the point here under discussion:

> "'It is no answer, that the acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much a violation of the compact as if they overturned his rights and interests.
>
> "'One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation,—dispensing with any part of its force.' Planters' Bank *v.* Sharp *et al.*, 6 How. 301."

The Court further says, 601 *et seq.*:

> "Let us suppose a case. A party recovers two judgments,—one against A., the other against B.,—each for the sum of $1,500, upon a promissory note. Each debtor has property worth the amount of the judgment, and no more. The legislature thereafter passes a law declaring that all past and future judgments shall be collected 'in four equal annual instalments.' At the same time, another law is passed, which exempts from execution the debtor's property to the amount of $1,500. The court holds the former law void and the latter valid. Is not such a result a legal solecism? Can the two judgments be reconciled? One law postpones the remedy, the other destroys it; except in the contingency that the debtor shall acquire more property,—a thing that may not occur, and that cannot occur if he die before the acquisition is made. Both laws involve the same principle and rest on the same basis. They must stand or fall together. The concession that the former is invalid cuts away

> the foundation from under the latter. If a State may stay the remedy from one fixed period, however short, it may for another, however long. And if it may exempt property to the amount here in question, it may do so to any amount. This, as regards the mode of impairment we are considering, would annul the inhibition of the Constitution, and set at naught the salutary restriction it was intended to impose."

Judge Swayne, in the final summing up of the decision of the Court says, on page 607:

> "The importance of the point involved in this controversy induces us to restate succinctly the conclusions at which we have arrived, and which will be the ground of our judgment.
>
> "The remedy subsisting in a State when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is, therefore, void."

Mr. Justice Pitney, in the dissenting opinion in Paine Lumber Co. *v.* Neal, *supra,* dealing with the point made in that case urging a retrospective effect of the Clayton Act, says on page 483:

> "Aside from their rights under the Act of 1890, I think appellants are now entitled to an injunction under Section 16 of the Clayton Act—the case clearly being within the terms of the section—notwithstanding the act took effect after the final decree in the District Court. In an equity suit for injunction the reviewing court should decide the case according to the law as it exists at the time of its decision. This is not giving a retrospective effect to the new statute, for the relief granted operates only *in futuro.*
>
> "The suggestion, in behalf of defendants, that Section 6 of the Clayton Act establishes

a policy inconsistent with relief by injunction in such a case as the present, by making legitimate any acts or practices of labor organizations or their members that were unlawful before, is wholly inadmissible. The section prohibits restraining members of such organizations from 'lawfully carrying out the legitimate objects thereof'. What these are is indicated by the qualifying words: 'instituted for the purpose of mutual help, and not having capital stock or conducted for profit'. But these are protected only when 'lawfully carried out.' The section safeguards these organizations while pursuing their legitimate objects by lawful means, and prevents them from being considered, merely because organized, to be illegal combinations or conspiracies in restraint of trade. The section, fairly construed, has no other or further intent or meaning. A reference to the legislative history of the measure confirms this view. House Rep. No. 627, 63d Cong. 2d Sess., pp. 2, 14-16; Senate Rep. No. 698, 63d Cong., 2d Sess., pp. 1, 10, 46. Neither in the language of the section, nor in the committee reports, is there any indication of a purpose to render lawful or legitimate anything that before the act was unlawful, whether in the objects of such an organization or its members or in the measures adopted for accomplishing them."

Can it be successfully claimed that the Clayton Act is available against petitioner because the order of the Circuit Court of Appeals for a modification of the final injunctive decree was entered after the Clayton Act became law?

It seems to us, the object of that Act is a complete answer.

It was intended to govern the acts and orders of Courts of original jurisdiction and proceedings at *nisi prius* and could not practically be invoked on appeal or review in some Appellate tribunal.

(b) We insist the Clayton Act for other reasons must be held to be inapplicable and ineffective.

That Act cannot be made applicable to the instant case, because *this is not a case involving or growing out of a dispute concerning terms or conditions of employment (a) between employer and employees, (b) or between employers and employees, (c) or between employees (d) or between persons employed and persons seeking employment.*

There was no strike at this plant instituted by the employees or with the authority of the employees.

There was no controversy or dispute between the petitioner and its employees. See testimony of Walcher, printed record, page 25: *"From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to the petitioner from any of the employes with regard to wages."*

Only two of the employees left the employ of the petitioner and neither because of any strike of the employees.

Churchill was one of the employees who left. He testified, printed Record, page 53:

> "At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had to take at the time being and I haven't had anything better since. I didn't get a better job. *I quit because these fellows asked me to go out."*

Cook, the other employee, leaving his employment, testified at page 56 of the Printed Record:

> "I am an electrician and belong to none of the unions. I worked at the plant about three

> weeks after it started up. * * * I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, *and I quit because they said there was a strike on.*"

No other employee out of the entire body of workmen left their employment.

The strike at the plant of the petitioner was instigated by the respondent, the Tri-City Central Trades Council, an utter stranger to the petitioner, as disclosed by the testimony on the hearing and the strike notice in the form of a handbill hereinbefore quoted.

That organization did not act or speak for the employees of the petitioner, nor had it authority to act for them nor was the strike instigated by that organization subsequently approved by the employees of petitioner. On the contrary the Tri-City Central Trades Council through its officers and agents, a stranger both to the petitioner and its employees, conspired to force the employees to violate their contracts and leave the employ of the petitioner, by arbitrarily instigating and wantonly prosecuting an unauthorized, illegal, brutal and criminal strike. See testimony of Walcher, Printed Record, page 41:

> "Earl Galloway was admitted to my office and told me there was a Committee that represented the labor organization; *I asked him if the Committee represented our employees and he said they did not*, and I told him we didn't recognize any labor organizations; we had never had any complaints or demands from any of our employees."

Earl Galloway, President of the Tri-City Central Trades Council testified, Printed Record, Page 44:

> "As Chairman I went in to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of, that none of his employees had said anything to him that they were dissatisfied; *he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions;* he stated that he would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievance to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back."
>
> "This was about the 20th or 21st of April. *It was reported back to the joint board and a strike was declared on the plant.* Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts, I believe."

c. Section 20 of the Clayton Act is further inapplicable to the instant case because of the facts disclosed in the record conclusively establishing that an injunction was necessary to prevent irreparable injury to property or to a property right of the petitioner and for which injury there was no adequate remedy at law.

The purpose of the strike instigated by the Tri-City Central Trades Council is indicated in the testimony of the defendant Cook at page 56 of the Printed Record as follows:

> "*I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade*

the men not to take the places of the strikers the Company would restore the wages. I was trying to make them restore the wages or close down the plant.''

A further indication of the purpose of this strike is disclosed in the brief of counsel for the respondent in answer to the petition for *certiorari* at page 35 as follows:

> *''And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.''*

A further indication of the purpose of the strike is disclosed in the testimony of Mr. Walcher at page 30 of the Printed Record as follows:

> *''As works manager threats had been carried to me by third persons from the pickets to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end.''*

and again at page 30:

> *''I was told a statement had been made that the plant was going to be burnt.* The plant is of various construction, some combustible and some non-combustible. The frame of the plant is wood in a great many cases, and one of the large buildings is an entire wood building.''

On the trial no denial was made of the threat to destroy and burn the works of petitioner, either by any of the respondents, or by the witnesses testifying for respondents.

Of course the provisions of the second paragraph of Section 20 have relation only to the kind of cases and situations cognizable under the first

paragraph. This case not coming within the provisions of the first paragraph of Section 20 is therefore not subject to the admonitory inhibitions against the issuing of a restraining order or injunction set forth in the second paragraph.

(d) The "Clayton Act" not available because inapplicable to the facts proved in the instant case.

The effect of the Clayton Act upon cases arising out of "strikes" as developed by and applied to the given facts appearing has been considered in a number of instances in the Federal Courts. In considering the applicability of the Clayton Act from the view-point of the facts disclosed by the evidence at the hearing in the instant case, we ask consideration of the testimony of the various witnesses, excerpts of which appear hereinabove on pages 96 to 109 inclusive. Lawlessness, intimidation and brutality under the guise of "peaceful picketing" and "peaceful persuasion" are sought to be defended and exonerated by counsel for respondents. It is inconceivable that the "Clayton Act" under any possible circumstances could be successfully availed against a decree for permanent injunction and the enforcement thereof under the facts established at the hearing and which even the Circuit Court of Appeals admitted to have been lawless and subject to restraint by injunction.

We insist, however, that the "Clayton Act" not only is inapplicable in this case with reference to the acts of assault and violence and physical brutality, but also against picketing *per se*, unattended, if you please, by acts of physical violence. In support of our contention in this regard we call the Court's attention to the following cases de-

cided in the Federal Courts since the Writ of Certiorari in this case was granted:

See the case of *Montgomery* v. *Pacific Electric Railway Co.*, 258 Fed. Rep. 382. We ask the Court's attention to the language of the opinion at page 388, *et seq.* The Court says, p. 389 as follows:

> "That the order here appealed from accords with the decision in the case cited is expressly conceded in the brief for the appellants, where it is declared that—
>
> "The injunction approved by the Supreme Court in the Hitchman Case does the same violence to the provisions of the Clayton Act as does the order at bar."

And again:

> "Certain it is that the provisions of the Clayton Act and the decision in the Hitchman case cannot be reconciled."
>
> "Nor is it true that the Supreme Court made in the case cited no reference to the Clayton Act; for, notwithstanding the fact that that act was pressed upon its consideration, the court, in the course of its elaborate opinion, expressly declared it 'needless to say there is no act of legislation to which defendants may resort for justification.'"

See also the late case of *Dail-Overland Co.* v. *Willis Overland*, 263 Fed. Rep. (Advance Sheets May 6, 1920) 171. The Court says at page 185:

> "Complainant is not here seeking relief upon the same grounds which the Overland might occupy should it appeal to a court. Unless the law was modified by the passage of the so-called Clayton Act (Act Oct. 15, 1914, c. 323, 38 Stat. 730), it must be held that the complaint states a cause of action of conspiracy, reprehended by the Sherman Act of

July 2, 1890, c. 647 (Comp. St. Sec. 8820 *et seq.*) under the authority of Loewe *v.* Lawlor, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and Gompers *v.* Buck's Stove & Range Co., 221 U. S. 418, 31 Sup. Ct. 492, 55 L. Ed. 797, 34 L. R. A. (N. S.) 874. On page 438 of the latter decision (31 Sup. Ct. 497 [55 L. Ed. 797, 34 L. R. A. (N. S.) 874]) the Court says:

"'The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained. To hold that the restraint of trade under the Sherman Anti-Trust Act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined, would be to render the law impotent. * * * But the very fact that it is lawful to form these bodies [labor organizations], with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution, or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one.'

"The acts charged against the alleged co-conspirators in this case have been in contemplation as agencies to effect the conspiracy, and also committed to further that conspiracy, were morally much more reprehensible than those charged against the alleged conspirators in the cases cited; *also in the present case the labor defendants are charged with conspiring to induce the employees of the Overland to break their contracts with the latter.* Consequently the case is within the

scope of Hitchman Coal Co. *v.* Mitchell, and Eagle Glass & Mfg. Co. *v.* Rowe, reported in 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497 Ann. Cas. 1918B, 461, and 245 U. S. 273, 38 Sup. Ct. 80, 62 L. Ed. 286, respectively.

"Does the Clayton Act change the law in any way, so as to affect the application here of the cases above cited? We are unable to see that it does, for we see nothing in this case that brings into pertinency the statement with which section 6 of that act (Comp. St. Sec. 8835f) begins, 'that the labor of a human being is not a commodity or article of commerce'; nor are the other provisions of section 6 applicable here. We are not asked here 'to restrain individual members of such organizations [labor organizations and others named] from *lawfully* carrying out the *legitimate objects thereof*,' nor are we asked to declare the labor organizations named as defendants in this case 'to be illegal combinations of conspiracies in restraint of trade.' The things which the labor defendants are alleged to have in mind to accomplish the purposes of their alleged conspiracy, and the things which are alleged to have been done in furtherance of that conspiracy by way of overt acts, cannot, by the wildest stretch of imagination, be considered to be 'lawfully carrying out the legitimate object' of such organizations. Intimidation, violence, bloodshed, cannot be said to be lawful means to the effecting of legitimate objects of a labor organization, nor can it be said that the acts alleged to have been in contemplation and to have been put in practice as agencies of the alleged conspiracy were remotely within the privileges of peacefully persuading and lawfully assembling accorded to persons engaged in a labor controversy by section 20 of the Clayton Act (Comp. St. Sec. 1243d)."

See also Kinloch Telephone Co. *v.* Local Union No. 2, etc., *supra*. At page 320, the Court says:

> "Counsel for plaintiffs, to sustain their right to injunctive relief herein, rely largely upon the case of Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. cas. 1918B, 461. While the Hitchman Case was not decided until three years after the Clayton Act took effect, it was, however, begun seven years before the passage of that act. If the provisions of the Clayton Act passed under judgment in the Hitchman case, then plaintiffs have, upon the facts proven, clearly shown themselves entitled to the injunction for which they pray. But I cannot bring myself to conclude that the Supreme Court of the United States held the Clayton Act in judgment when it ruled the Hitchman Case. Judge Trieber seemingly held to the view that the Hitchman Case did not consider the Clayton Act. Kroger Grocery Co. *v.* Retail Clerks, *supra*. In his view I am constrained to acquiesce.
>
> "Many cases are urged upon my attention, which hold substantially to the view, so forcefully expressed in Atchison *v.* Gee (D. C.) 139 Fed. 582, that there can be no such thing as peaceful picketing, any more than there can be 'chaste vulgarity, or peaceful mobbing, or lawful lynching'; but of such cases it is only necessary to say that none of them held in judgment the provisions of the Clayton Act. See 24 Cyc. 838; Erdman *v.* Mitchell, 207 Pa. 79, 56 Atl. 327, 63 L. R. A. 534, 99 Am. St. Rep. 783; Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176, 4 L. R. A. (N. S.) 1001, 110 Am. St. Rep. 248. See also Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., *supra*, at page 197 *et seq.*" See also Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., *supra*, at page 197, *et seq.*

It was proved beyond peradventure that the property and plant of petitioner were being injured and were imperilled by the acts of the respondents. Section 20 of the Clayton Act not only eliminates from its operation actions for injunction to prevent irreparable injury to property, but also to property rights. The opportunity and the right to carry on and conduct business is an established right and is a valuable property right. Interference with and invasion of this right legally pursued can be restrained even under the express language of Section 20 of the Clayton Act.

To carry on and operate its business, the petitioner required the services and labor of workers. The petitioner had the legal right to the enjoyment of the work and activities of the men employed by it, and any interference therewith was an illegal interference and was subject to injunction. Petitioner had the right to the performance of the employment contracts existing between itself and its employes and the effort of the respondents to interfere with the performance of these contracts and to force its employees to leave their work and the petitioner's service by initiating and carrying on a "strike" at the plant of the petitioner, was illegal and an unlawful combination and conspiracy to secure the violation of the employment contract between the petitioner and its employees, was injurious to the business and the property and the property rights of the petitioner and subject to injunction.

It is not necessary there should be or that there should be proved, time contracts between the petitioner and its employees. Employment at will is sufficient. The petitioner is legally entitled to the employment of his employees under employment contracts at will and to the benefits and

good-will resulting therefrom. See Hitchman Coal & Coke Co. *v.* Mitchell, *supra.*

We insist under the facts of this case the Clayton Act, especially under the rulings of this Court, can in no way affect the right of the petitioner to maintain the permanent injunction as awarded to it in the final decree entered in this case by the District Court.

X.

Under the decisions of this court the "Clayton Act" is inapplicable and unavailable in the instant case.

It is believed this Court has already decided that Section 20 of the Clayton Act is not applicable to cases such as the instant case. In the report of the case of *Paine Lumber Co.* v. *Neal*, 224 U. S. 459, the contentions and arguments of counsel for the respective parties disclose that the application of Section 20 of the Clayton Act was urged and resisted by respective counsel. The dissenting opinion of Mr. Justice Pitney, concurred in by Mr. Justice McKenna and Mr. Justice Vandeventer goes very fully into that question at pages 480 *et seq.* and we quote liberally from pages 483 *et seq.*:

> "The suggestion, in behalf of defendants, that Section 6 of the Clayton Act establishes a policy inconsistent with relief by injunction in such a case as the present, by making legitimate any acts or practices of labor organizations or their members that were unlawful before, is wholly inadmissible. The section prohibits restraining members of such organization from '*lawfully* carrying out the *legiti-*

mate objects thereof.' What these are, is indicated by the qualifying words: 'instituted for the purposes of mutual help, and not having capital stock or conducted for profit.' But these are protected only when 'lawfully carried out.' The section safeguards these organizations while pursuing their *legitimate* objects by lawful means, and prevents them from being considered, merely because organized, to be illegal combinations or conspiracies in restraint of trade. The section, fairly construed, has no other or further intent or meaning. A reference to the legislative history of the measure confirms this view. House Rep. No. 627, 63d Cong. 2d sess., pp. 2, 14-16; Senate Rep. No. 698, 63d Cong. 2d sess., pp. 1, 10, 46. *Neither in the language of the section, nor in the committee reports, is there any indication of a purpose to render lawful or legitimate anything that before the act was unlawful, whether in the objects of such an organization or its members or in the measures adopted for accomplishing them.*

It is altogether fallacious, I think, to say that what is being done by the present defendants is done only for the purpose of strengthening the union. Conceding this purpose to be lawful, it does not justify or excuse the resort to unlawful measures for its accomplishment. *A member of a labor union may refuse to work with 'non-union' men, but this does not entitle him to threaten manufacturers for whom he is not working, and with whom he has no concern, with loss of trade and a closing of the channels of interstate commerce against their products if they do not conduct their business in a manner satisfactory to him.*

And the suggestion that, before the Clayton Act, unlawful practices of this kind were usually and notoriously resorted to by labor unions, and that for this reason Congress must have intended to describe them as 'legitimate objects,' and thus render lawful what

before was unlawful, is a libel upon the labor organizations and a serious impeachment of Congress.

Nor can I find in Section 20 of the Clayton Act anything interfering with the right of complainants to an injunction. It refers only to cases 'between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions. These words evidently relate to suits arising from strikes and similar controversies, and the committee reports upon the bill bear out this view of the scope of the section. But this is not such a suit. There is no relation of employer and employee, either present or prospective between the parties in this case. Defendants who are employees are in one branch of industry in New York City; complainants are employers of labor in another branch of industry in distant States. Nor is there any dispute between them concerning terms or conditions of employment. Section 20 prohibits an injunction restraining any person 'from ceasing to patronize or to employ' 'any party to *such dispute,* or from recommending, advising, or persuading others by *peaceful and lawful* means so to do; * * * or from peaceably assembling *in a lawful manner, and for lawful purposes;* or from doing any act or thing *which might lawfully be done in the absence of such dispute* by any party thereto.'

Clearly, this provision is limited to the participants in a dispute of the character just indicated. And quite as clearly, only 'lawful' measures are sanctioned—that is, of course, measures that were lawful before the act. There is no grant, in terms or by necessary inference, of immunity in favor of a boycott of traders in interstate commerce, violative of the provisions of the Sherman Act, to which the Clayton Act is supplemental.'' (Italics ours.)

In the opinion of Mr. Justice Holmes written for the majority of the Court he says on this subject at page 471:

> "Personally I lay those questions on one side because, while the Act of October 15, 1914, c. 323, Par. 16, 38 Stat. 730, 737, establishes the right of private parties to an injunction in proper cases, in my opinion it also establishes a policy inconsistent with the granting of one here. *I do not go into the reasoning that satisfied me because upon this point I am in a minority.*" (Italics ours.)

From this expression it is clear that upon this particular question the majority of the Court concurs in the views expressed by the dissenting opinion of Mr. Justice Pitney.

It is not disclosed in the reports of these cases whether or not the applicability of the Clayton Act was presented to or urged upon the Court. It is fairly inferable, however, that such was the case. It would seem hardly possible that in a case so fully argued as Hitchman *v.* Mitchell, *supra*, the Clayton Act and its effect upon the case were not considered, especially since this Court had so fully considered the application thereof to similar facts in Paine Lumber Co. *v.* Neal, *supra*, and argued and decided before the decisions in Hitchman *v.* Mitchell, *supra*, and Eagle Glass & Mfg. Co. *v.* Rowe, *supra*. Indeed, the following expression appears in the opinion of Mr. Justice Pitney in the Hitchman case at page 251: "Needless to say there is no act of legislation to which defendants may resort for justification," as referred to in the case of Montgomery *v.* Pacific Railway Co., 258 Rep., page 389.

It is altogether possible, this Court having decided in Paine Lumber Co. *v.* Neal, *supra*, that the

Clayton Act could have no retrospective effect, no point was made on nor attention paid to, the Clayton Act and its possible effect in the cases of Hitchman *v.* Mitchell, *supra,* and Eagle Glass & Mfg. *v.* Rowe, *supra.*

The latest and most direct expression on the Clayton Act is the decision of this Court in Duplex Co. *v.* Deering, 254 U. S. 443. In our judgment that case is decisive upon the applicability and effect of the Clayton Act on cases arising under the facts and circumstances alleged and established in the instant case.

Section 20 of this Act is practically the only one pertinent to the instant case and in that regard Congress expressly limited its application to cases "between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law". With reference to this section this Court said in Duplex *v.* Deering, *supra,* at page 469:

> "This regulates the granting of restraining orders and injunctions by the courts of the United States in a designated class of cases, with respect to (a) the terms and conditions of the relief and the practice to be pursued, and (b) the character of acts that are to be exempted from the restraint; and in the concluding words it declares (c) that none of the acts specified shall be held to be violations of any law of the United States. All its provisions are subject to a general qualification respecting the nature of the con-

troversy and the parties affected. It is to be a 'case between an employer and employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment'."

This Court proceeds further to say, page 470:

"It is very clear that the restriction upon the use of the injunction is in favor only of those concerned as parties to such a dispute as is described. The words defining the permitted conduct include particular qualifications consistent with the general one respecting the nature of the case and dispute intended; and the concluding words, 'nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States,' are to be read in the light of the context, and mean only that those acts are not to be so held when committed by parties concerned in 'a dispute concerning terms or conditions of employment'."

Having reference to the interpretation given to this provision of Section 20 by the Circuit Court of Appeals, this Court said, page 471:

"The majority of the Circuit Court of Appeals appear to have entertained the view that the words 'employers and employees,' as used in Section 20, should be treated as referring to 'the business class or clan to which the parties litigant respectively belong'; and that, as there had been a dispute at complainant's factory in Michigan concerning the conditions of employment there—a dispute created it is said, if it did not exist before, by the act of the Machinist' Union in calling a strike at the factory—Section 20 operated to permit members of the Machinists' Union elsewhere—some 60,000

> in number—although standing in no relation of employment under complainant, past, present, or prospective, to make that dispute their own and proceed to instigate sympathetic strikes, picketing, and boycotting against employers wholly unconnected with complainant's factory and having relations with complainant only in the way of purchasing its product in the ordinary course of interstate commerce—*and this where there was no dispute between such employers and their employees respecting terms or conditions of employment.*"

In the instant case there was no dispute between the petitioner and its employees. There was no dissatisfaction or discontent on the part of the employees. The wages paid were announced and posted by the employer and freely accepted by the employees. There was no complaint made as to working conditions. There was no strike at the plant of the petitioner initiated by the employees.

The respondents, Tri-City Central Trades Council, and its officers and self-appointed Committee, none of whom were employees of the petitioner, represented, as they say, 37 different crafts and we dare say that not less than 30 or 35 of those different crafts were in no way related to the employees or the work of the employees of the petitioner. So far as the record disclosed but one of the crafts embraced in the number disclosed in the record had any relation whatever to the employees or the work of the employees, namely the Machinists' Union, of which Churchill said he was a member.

These respondents, unrelated by employment or by contract, express or implied, to the petitioner, sought to raise a controversy with the petitioner. The petitioner declined to enter into

controversy with the respondents, who admitted they neither were employees nor represented employees of the petitioner. The petitioner declined to discuss and enter into a dispute with these intruders and strangers. They arbitrarily and without request or authority or knowledge or consent of the employees of the petitioner initiated a strike at the petitioner's plant and sought to create a dispute between the petitioner and its employees. It did not succeed. It persisted in its efforts in this regard to the point of making it impossible for the employees to continue performing their contracts of employment with the petitioner or to continue in the employment and the performance of their duties and obligations as such employees without being subjected to intimidation, threats, insults, assaults, violence, thuggery and made the victims of bricks and bludgeon.

Did what happened in the instant case constitute, within the language of the Clayton Act a "case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of, a dispute concerning terms or conditions of employment"?

If not, and there can be no question that there was not such controversy and dispute, then clearly under the decision of this Court in Duplex Co. *v.* Deering, *supra*, the Clayton Act did not and cannot apply.

With reference to the nature of the construction and interpretation which should be given the Clayton Act in its application to cases of the kind as the instant case, the Court says, on page 471:

> "We deem this construction altogether inadmissible. Section 20 must be given full

effect according to its terms as an expression of the purpose of Congress; but it must be borne in mind that the section imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States and upon the general operation of the anti-trust laws, a restriction in the nature of a special privilege or immunity to a particular class, with corresponding detriment to the general public; and it would violate rules of statutory construction having general application and far-reaching importance to enlarge that special privilege by resorting to a loose construction of the section, not to speak of ignoring or slighting the qualifying words that are found in it. Full and fair effect will be given to every word if the exceptional privilege be confined—as the natural meaning of the words confines it—to those who are proximately and substantially concerned as parties to an actual dispute respecting the terms or conditions of their own employment, past, present or prospective. The extensive construction adopted by the majority of the court below virtually ignores the effect of the qualifying words. Congress had in mind particular industrial controversies, not a general class war. 'Terms or conditions of employment' are the only grounds of dispute recognized as adequate to bring into play the exemptions; and it would do violence to the guarded language employed were the exemptions extended beyond the parties affected in a proximate and substantial, not merely a sentimental or sympathetic, sense by the cause of dispute.

"Nor can Section 20 be regarded as bringing in all members of a labor organization as parties to a 'dispute concerning terms or conditions of employment' which proximately affects only a few of them, with the result of conferring upon any and all members—no matter how many thousands there may be, nor how remote from the actual conflict—

> those exemptions which Congress in terms conferred only upon parties to the dispute. That would enlarge by construction the provisions of Section 20, which contain no mention of labor organizations, so as to produce an inconsistency with Section 6, which deals specifically with the subject must be deemed to express the measure and limit of the immunity intended by Congress to be incident to mere membership in such an organization."

In other words, the Act being in the nature of class legislation, while giving to it all the effect intended, it should be limited in its construction to the specific parties and specific subjects expressly mentioned therein. Further in keeping with this subject of construction, we find this Court said on page 473:

> "The emphasis placed on the words 'lawful' and 'lawfully,' 'peaceful' and 'peacefully,' and the references to the dispute and the parties to it strongly rebut a legislative intent to confer a general immunity for conduct violative of the anti-trust laws, or otherwise unlawful.

The form and the substance of the injunction directed by this Court in that case embraces restraint such as was granted to the petitioner by the District Court and improperly and unwarrantedly directed to be modified by the Circuit Court of Appeals in the instant case.

As we understand the dissenting opinion of Mr. Justice Brandeis, it is contended by him and his associates in dissent that the Clayton Act is so broad and intended to be so broad as to comprehend, not only a controversy or dispute between the employer and the employee, but disputes and controversies between persons and organizations

other than the immediate parties to an employment and whose welfare may be influenced or affected by the success or failure in any dispute that may be instigated or inspired for their purposes, between employer and employees.

Mr. Justice Brandeis in his dissenting opinion says, page 487:

> "The Duplex Company contends that Section 20 of the Clayton Act does not apply to the case at bar, because it is restricted to cases 'between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment'; whereas the case at bar arises between an employer in Michigan and working men in New York not in its employ, and does not involve their conditions of employment. But Congress did not restrict the provision to employers and workingmen *in their employ*. By including 'employers and employees' and 'persons employed and persons seeking employment' it showed that it was not aiming merely at a legal relationship between a specific employer and his employees."

The activities of the Tri-City Central Trades Council cover and embrace the cities of St. Louis, Missouri, East St. Louis, Illinois, and Granite City, Illinois.

For purposes of analogy let us suppose that steel foundrymen employed in the City of St. Louis, Missouri, desire to secure an increase in their wages. The employers of these St. Louis foundrymen are unwilling to grant any increase. The officers of the Tri-City Central Trades Council desiring to force an increase in wages from the owners of the steel foundry in the City of St.

Louis, decide that in order to secure such increase for the employees there, it would be necessary to force increase in the wages of the steel foundrymen employed in the plant of the petitioner, the American Steel Foundries, operating and conducting its plant and business at Granite City, Illinois, because the petitioner has, if you please, the largest and strongest steel foundry plant within the three cities covered by the Tri-City Central Trades Council, believing that if they can force an increase in the wages at the plant of the petitioner, it would force the owners of the steel foundry plants in St. Louis, Missouri, to do the same. The relationship between the petitioner and its employees at this time is serene and satisfactory. There is neither dissatisfaction nor discontent amongst the petitioner's employees concerning their wages or working conditions. The wages and working conditions of petitioner's employees have not been complained of. The Tri-City Central Trades Council, to carry out its purpose to force an increase of wages of the employees of the St. Louis plant, decide to demand from the petitioner an increase in the wages of its employees. The officers of the Trades Council appoint a committee, none of whom is employed by the petitioner. This committee proceeds to petitioner's plant, seeks a meeting with the manager and demands from him an increase in the wages of its employees. This request comes to the manager like "a clap of thunder out of a clear sky." He is quite surprised. He has never heard of any dissatisfaction with the wages paid to the employees. There has been no complaint from its employees, either about wages or working conditions. He advises the chairman of the committee that the petitioner's plant is an open shop. He

is informed by the chairman of the committee that they are not employees nor represent employees of the petitioner. That it does not deal with or recognize unions. That he cannot discuss the matter of wages with this committee, but willing to discuss any question with his own employees. The committee thereupon for the purpose of accomplishing their desire to force an increase in the wages at St. Louis, and incidentally at Granite City, without the authority of the petitioner's employees, initiate a strike at petitioner's plant, print, post and distribute notices of the strike over its own name, and then for the purpose of carrying out its end, proceeds to do what the record here discloses was done.

As we understand the dissenting opinion of Justice Brandeis, and his associates in dissent, the purpose of the steel foundrymen employed in the St. Louis plant to secure an increase in their wages being lawful, and such increase being in the interest of the general welfare of men engaged in the steel foundry business, it would be lawful for the Tri-City Central Trades Council, under the circumstances appearing in the instant case, to initiate and conduct a strike at petitioner's plant as and in the manner herein disclosed, and petitioner would be helpless and powerless by reason of the provisions of the Clayton Act to prevent the injury inflicted by such strike and compelled to suffer damage and injury without recourse.

Does this not present a case covered by the dissenting opinion as expressed on page 487, as follows:

> "By 1914 the ideas of the advocates of legislation had fairly crystallized upon the manner in which the inequality and uncertainty

> of the law should be removed. It was to be done by expressly legalizing certain acts regardless of the effects produced by them upon other persons. As to them Congress was to extract the element of *injuria* from the damages thereby inflicted, instead of leaving judges to determine according to their own economic and social views whether the damage inflicted on an employer in an industrial struggle was *damnum absque injuria*, because an incident of trade competition, or a legal injury, because in their opinion, economically and socially objectionable. This idea was presented to the committees which reported the Clayton Act. The resulting law set out certain acts which had previously been held unlawful, whenever courts had disapproved of the ends for which they were performed; it was then declared that, when these acts were committed in the course of an industrial dispute, they should not be held to violate any law of the United States."

Is it possible that such doctrine can be sound law? Is it conceivable that Congress in enacting the Clayton Act intended any such consequences to flow from such acts? Can such a conspiracy both at common law and under the laws of Illinois be legalized by the Clayton Act? This Court in its majority opinion says "No" and we believe in the case at bar this Court will reaffirm the opinion of the majority in that regard.

XI.

Errors in Respondents' Statements and Quotations of the Evidence.

We informed counsel for respondents, in view of the number of printed briefs and arguments heretofore filed in this case, we deemed it advisable and proper to prepare and file a "Revised Brief and Argument", embracing the points and subjects submitted in the Briefs and Arguments heretofore filed. Counsel for respondents advised us that it would be impossible for him to follow our purpose in that regard. As this brief goes to print respondents' counsel advises us he will also prepare and file a revised brief and argument.

For the convenience of the Court in giving consideration to this case, we are filing this "Revised Brief and Argument", perhaps too long because of the quotations from decisions and the evidence. Nevertheless at the expense of time and brevity, by liberal quotations from cases cited and the record we hoped to enable the Court the easier and the quicker to see and appreciate the value and relevancy thereof.

In the printed briefs and arguments heretofore filed by counsel for respondent we noticed and found a number of errors in and incorrectness in statements of the evidence to which the attention of the Court was called by us in some of the printed briefs and arguments heretofore filed.

With the same purpose, we will here in this Revised Brief and Argument bring to the attention of the Court the errors and inaccuracies in statements of the evidence by counsel for the respondents.

Heretofore it was not claimed by respondents that the Tri-City Central Trades Council, or any other of the respondents, claimed authority to act

for the employees of petitioner in making its demands upon petitioner or in calling the "strike".

Counsel for respondents, appreciating the importance of this fact, states evidence in the form of quotations quite unsustained and unjustified by the record. He states, page 27 of his brief,

> "Complaint has been made in the case at bar that such Council had no authority to protest against the reduction of the scale, even though the superintendent himself testified that 'probably 80 or 90 per cent. of those employed on the day the strike was ordered *were members of various locals affiliated with such Trades Council'* (AB 41)."

Walcher was the petitioner's superintendent. The only testimony given by him on this subject appears under cross-examination at page 41, as follows:

> "When we closed in November all our employees were discharged; they were laid off indefinitely on account of closing down the plant. When we opened April 6, we employed whoever we saw fit; whoever *employed* (applied) for employment at the gate. Started the plant the same as a new plant. We only had called for, in round numbers, 300 men, and laid off approximately 1300 men. *80 or 90 per cent. of the employees were old men. I assume these men were members of various organizations; I can't state definitely as to that.*"

The Court will not find in the testimony of Mr. Walcher, as it appears on page 41 of the record, "probably", or "of those employed", or "on the day the strike was ordered", or "*members of locals affiliated with such Trades Council*", and all contained in respondents' quotation of this evidence. Did counsel believe that this misquotation would escape attention?

Counsel states, on page 38,

> "In the case at bar the Tri-City Central Trades Council represented the employees

> other than the strike-breakers. Walcher, the superintendent, testified that probably 80 or 90 per cent were members of locals affiliated with the Tri-City Central Trades Council (AB. 41)."

As before stated, this statement utterly and affirmatively differs from the evidence as it appears on page 41 of the record. Counsel further states, on page 38,

> "According to the testimony of the president and secretary of the Central Trades Council, such organization acted for and on behalf of employees in such mill. Galloway testified, 'After the Council received complaints about reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting, and they brought their complaint jointly before the Central Body and asked for its co-operation' (AB. 41). His testimony agrees with that of Superintendent Walcher, who said: 'Eighty or 90 per cent of the 350 men employed when the strike took place were members of different locals affiliated with the Central Trades Council' (AB. 41)."

Again containing statements not contained in the record, notably, "*such organization acted for and on behalf of such employees in such mill*", and also, "*80 or 90 percent of the 350 men employed when the strike took place were members of different locals affiliated with the Central Trades Council.*"

In the same connection counsel for respondent says:

> "Cavanaugh, the secretary, testified that, at a meeting held on April 15, a communication was received requesting that a special meeting be called of all trades working at the American Steel Foundries, to arrange some plan to have the wages reinstated, and a meeting was called for the 19th. At such meeting 10 or 12 trades were represented."

He does not state from whom the communication was received, leaving it to be inferred that the communication might have been from the employees of the petitioner. The witness stated, at page 57 (Printed Record), that the communication was received from the Machinists' Union. He did not say from the employees of the petitioner. The testimony of Superintendent Walcher is again misquoted, and through the form of misstatement it is attempted to give character to the testimony of Galloway, the president, and Cavanaugh, the secretary, not justified by the record.

So far as the record shows there was but one employee of the petitioner, a member of any machinist's union, and that one went out in response to the "strike" called by the Trades Council, i. e., Thomas Churchill, who testified, page 53,

> "At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I was not completely satisfied. It was the best thing I had to take at the time being and I have not had anything better since. I did not get a better job. *I quit because these fellows asked me to go out.*"

It is evident from this testimony that no machinist made any complaint or requested a meeting to be called of trades working at the American Steel Foundries.

On page 56 counsel says,

> "Complaint has been made in the case at bar, that such Council had no authority to protest against the reduction of the scale—even though the superintendent himself testified that probably 80 or 90 per cent of those employed on the day the strike was ordered were members of various locals affiliated with such Trades Council (AB. 41)."

again containing the misquotation above referred to.

On page 59, however, dealing with the same statement of the superintendent, counsel quotes Mr. Walcher as follows:

> "We had approximately 300 men—80 or 90 per cent of those were old men; I assume these were members of the various labor organizations" (AB. 41B).

Even in this partially correct quotation counsel adds the article "the" before "various labor organizations" and inserts the word "labor" before the word "organizations." Both "the" and "labor" were interpolated, though not in the testimony as shown on page 41. It must have been intended to give some form of identification or application to the "labor" organizations forming the Trades Council, which the witness did not do and did not intend to do; and counsel in the same quotation omits deliberately the further statement of the witness,

> "I can't state definitely as to that."

On page 67 counsel says,

> "In the case at bar, 'after a request from those employed in the mill for co-operation, the Executive Board selected the pickets' (AB. 44-57)."

We have several times and with great care examined the record from page 44 to 57 inclusive, as well as indeed the whole record, and find nowhere any such evidence as is here quoted. The only evidence appearing in the record which in the remotest way approaches this misquotation of counsel appears in the testimony of Galloway at the top of page 44 of the printed record and is as follows:

> "After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation in the matter of arbitration with the foundries."

and on page 45 the following:

> "A Committee of the joint board of the Tri-City Central Trades Council selected these pickets; rather they were from the different crafts that were connected with the reduction in wages."

How counsel for respondents could have distorted the evidence in the record in the manner as above quoted is inconceivable. There is not at the point indicated in his brief, nor anywhere else in the record, a statement that there was any request from the employees in the mill for "co-operation." There was no such testimony by any witness in the entire record. Nor can the expression "rather they were from the different crafts that were connected with the reduction in wages" be translated to mean "those employed in the mills". What evidently was referred to in the testimony of Galloway, namely "rather they were from the different crafts that were connected with the reduction in wages" meant machinists or foundrymen being of the crafts, members of which were employed by petitioner and imported from Missouri for purpose of slugging and beating petitioner's employees.

Counsel says on page 71 of his original brief "Churchill testified he quit because he was a member of 'the machinists' union' (AB. 52)". Churchill did not testify to any such thing. We find the evidence of Churchill on page 52 of the record,

and with reference to why he quit he says *"I quit because these fellows asked me to go out."* Who were "these fellows?" Not the Machinists' Union. They were the Trades Council. The Machinists' Union did not call the strike. The Trades Council called the strike. That is admitted, and the handbill appearing on page 24 of the record shows the strike was called by the committee of the Trades Council.

On page 104 of counsels original brief, he states "Cook testified that he quit because of the reduction of wages". On direct examination his testimony was, "I quit because they cut my wages". On cross-examination Cook said (Printed Record, 56):

> "I did not quit as soon as I got my pay but worked four or five days longer and *I quit because they said there was a strike on.* I just felt as it was right for me to come out."

Why counsel in this manner misstated the testimony of Cook must be apparent.

On page 107 of his original brief, counsel for respondent, again stating the testimony of Walcher, the superintendent, also made the amazing misquotation:

> "Eighty or 90 per cent of the 1600 men were members of the various locals affiliated with the Central Trades Council when the plant closed down,"

and proceeds to state

> "Then a like per cent of the 350 employed when it opened up were likewise members of the various locals represented by the said Central Trades Council" (AB. 41).

And he further says:

> "According to the testimony of the president and secretary of the said Council those employees affected by the reduction made the complaint, and asked the co-operation of such Council (AB. 44-57)."

The testimony of Walcher on this point the Court will find at page 41 of the record.

We have carefully followed counsel for respondents in his presentation of the evidence (?) and feel safe in saying that even the erroneous and insupportable misquotations do not sustain the contention that employees of the petitioner at any time were members of or were represented by the Trades Council in calling the strike at the petitioner's plant and in seeking to coerce the petitioner into a change of wages and conditions then satisfactory to the employees.

Counsel for respondents continued the practice of misquotation in the supuplementary brief filed by him. At pages 18 and 19 of his supplementary brief, counsel quotes from the testimony of Galloway, president of the Tri-City Central Trades Counsel (Printed Rec., 43-44).

Without the use of asterisks he omitted the following in the paragraph from which he quoted after: "As Chairman I went in to see Mr. Walcher and stated the case to him",

the following:

> "He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions; he stated that he

would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievances to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back."

He also omitted from the same paragraph the following after: "It was reported back to the joint board and a strike was declared on the plant", the following:

"Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts I believe."

And then counsel for the respondents in the same supplementary brief further quotes from the testimony of Galloway a paragraph appearing on page 45 of the Printed Record, but omits the following, which immediately follows his potation in the same paragraph:

"On the seven or eight occasions I was down there *I went down to see how things were going and went down to see that things were going right.* These pickets were stationed adjacent to Neidringhaus Avenue around the depot. That is one of the main streets leading from the plant.

"I am a plumber and were never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there. We circulated some bills (witness handed Exhibit 'B') that is a representation of the seal of the Tri-City Central Trades Council. This is one of the bills that was circulated that I referred to."

Counsel at page 19 of his supplementary brief, quotes from the testimony of Cavanaugh, Secretary of the Tri-City Central Trades Council (page 57, Printed Record) but omits the following referring to the Council: "They called a strike in this case".

Following immediately after the sentence "We had complaints from the men themselves working at the foundry" appearing on the same pages, he also omits the following from the same paragraph:

> "I couldn't state their names. I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

On page 20 of the brief Counsel quotes from the testimony of Walcher, appearing Printed Rec., 41. He quotes from a paragraph the following:

> "We ran the plant without any trouble with our men up until the morning of the 23rd of April."

He then omits the following from the same paragraph without the use of asterisks:

> "From the 24th of April on until the issuance of the restraining order the defendants were almost unbearable toward our employees; it reached the point where they were in fear of entering and leaving the works."

He also omits the following from the same paragraph without the use of asterisks:

> "Since the restraining order was issued every thing has been very peaceable and quiet and haven't had any trouble, our men entering

> and leaving the work; it would have been impossible for us to continue to operate the plant had this restraining order not been issued."

He also omits immediately following the paragraphs quoted the following testimony of Mr. Walcher:

> "Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from anyone in our employ."

Counsel in the same brief also quotes from the testimony of Holmes, witness for respondents, appearing at page 55, Printed Record, as follows:

> "I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

Immediately following this he omits the following sentence in the same paragraph:

> "I don't know what the reduction was. I didn't go back to find out."

He also omits the following from the testimony of the same witness on cross-examination on page 55 of the record:

> "I made application for work when the plant opened in April. I didn't get the work."

Counsel quotes from the cross-examination of Fortner, witness for petitioner, appearing at page 53 of the record. He used the expression "and was not molested" in his brief, while the record shows the expression used by the witness was "no-

body assaulted me", and counsel omits what immediately followed in the same paragraph:

> "It was either Ishman, Lamb or Holmes that told me there was a strike on and I had better not work there. I quit on the 25th. After that time I got reports to the effect that they said if I started working again they would knock my head off. That came from an outsider."

Why should counsel substitute "was not molested" for "nobody assaulted me"? The inquiry answers itself.

Counsel also, on pages 31 and 32 of his brief, quotes from the testimony of various witnesses for the petitioner to neutralize the evidence on the subject of violence and the use of force. The record is so full of indisputable evidence and proof of violence, assaults, and thuggery that it is unnecessary to comment on counsel's quotations in that regard. We are only surprised he should for one moment think that his garbled quotations from the testimony of the witnesses would escape refutation by the record itself.

CONCLUSION.

Injunction as decreed by District Court should stand.

When a conspiracy and combination are entered upon to do an unlawful act, the presumption is, the methods employed for its accomplishment will be correspondingly unlawful. When, as in the case at bar, the methods for the accomplishment of unlawful combination and conspiracy are illegal and lawless (as proved by the evidence and

judicially found by both the District Court and by the Circuit Court of Appeals), it is a fair presumption that similar unlawful and illegal methods will be continued unless restrained, and will be resumed if the restraint should be released. The decree permanently enjoining such lawlessness and the further execution of an unlawful combination and conspiracy should not be left to particularity of language or fine distinction of expression, but should be general and as comprehensive as possible to make certain the efficacy of injunction and restraint. The modification directed by the Circuit Court of Appeals, if its affirmance is conceivable, will be an invitation to the respondents to renew and continue their unlawful conspiracy and combination, and when haled into court in proper proceedings for contempt, to seek exemption from punishment by casting doubt upon the proper interpretation of the terms "lawful" and "picketing", and persuasion and as said in Barnes *v.* Typographical Union, *supra,* "would leave such question to the individual notions or bias of the particular judge." Judge Humphrey, who decided the case, having died, petitioner would lose the benefit of the knowledge and information which came to that Judge in his judicial capacity and which naturally and properly would be considered in the deliberations on any contempt proceeding instituted to punish a violation of an injunction in the modified form as proposed by the Circuit Court of Appeals.

In the light of the evidence of brutality and lawlessness, any modification, it seems to us, would be most unfortunate and most serious for both the petitioner and its employees. It would give an encouragement to interfering organizations hav-

ing no relation to the employer, and, as in the case at bar, made up of barbers and barkeepers, and clerks and workmen in various trades not related in any way to the business or enterprise of the petitioner, wherever resident, in Illinois or out of Illinois, to interfere with the business, property and operations of the petitioner and of its employees.

Up to and on April 24, 1914, the petitioner operated its plant in peace. Between the petitioner and its employees there was amity and accord. The employees of the petitioner had made no complaint of either wages or conditions; they were satisfied and contented. The respondent, the Tri-City Central Trades Council, claiming to represent certain trades and crafts, but not to represent any of the employees of petitioner, on April 20, 1914, through a committee headed by its president, Earl Galloway, none of whom was an employee of the petitioner or authorized to speak for any of the petitioners' employees then proceeded to put into effect the unlawful combination and conspiracy herein alleged, proved and adjudicated and to injure the petitioner and its employees and the petitioner's property, plant and business as shown in the record.

As hereinbefore stated, the petitioner has not sought and does not claim any right to interfere with or limit the right of any of its laborers or any employees to quit its employ; or to become a member of any labor organization; or singly or collectively to make demands for changes in wages or working conditions; or by joint action with others of its employees to call a strike as a means for securing a change in wages or working conditions; but petitioner does contend and does insist that the Tri-City Central Trades Council had no right, on its own initiative and without previous

authority of the petitioner's employees, to make demands upon the petitioner for a change in wages and upon petitioner's refusal to deal with its committee to call a strike against the petitioner, force the employees of the petitioner who were satisfied with their wages and working conditions and had not made any complaint, to quit their work, leave petitioner's employ, break their contracts of employment, and compel petitioner to close down its plant, to the great injury of its business and property.

If the practice and proceedings of the respondents in this case are sustained by affirmance of the decision of the Circuit Court of Appeals, then property and business are indeed insecure; both the employer and employee are in a position of helplessness and terrorism, and the vital interests of industry and of business and of capital and of labor as well seriously menaced.

We resspectfully submit that the decree of the Circuit Court of Appeals modifying the injunction of the District Court be reversed and the final decree of the District Court be affirmed.

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

GENERAL NO. 25809. TERM NO. 2.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, *et al.*,
Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh District.

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in

REVISED BRIEF AND ARGUMENT FOR PETITIONER.

Also

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and

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MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
SOLICITORS FOR PETITIONER.

MAX PAM,
Of Counsel.

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Judge Humphrey's Opinion.

The law is very well settled, I think so well settled that there can be no dispute with the court or between counsel, as to the rights of the parties. It is not a new question; not so old in this country as in Europe, but still it is not a new question even in this country.

Men have a right to combine their capital and create artificial bodies for the carrying on a great works, works so great no one man could do it. That is a combination. The law recognizes it. It is legal. The progress of the world has been marked more among the nations which permit this combination than anywhere else in the world.

In order to carry on these great works, something besides capital is necessary. Something more important than capital; something more human than capital; something that touches the people more tenderly than capital. That is labor. So the law provides, wisely provides, that a man who has labor to sell may combine with his fellows for the purpose of helping his own condition, or getting more for the commodity which he brings to the public service than he would if he were not organized, and that brings us near to the point of conflict. The manufacturer, the corporation, has work to do. It offers a price, the price which in its judgment the market would justify. The man or men who have the labor to sell try to meet that price. They cannot do it always. They say we will exercise the privilege, which the law gives us, to refuse to work for you. A and B join with C, D, E and

F, and they have a right to do that and say they won't work for you individually, or in a body. Now that is a lawful right, but the very statement of that right contemplates that any other man, or any other body of men, organized or unorganized, has a right to sell his or their labor at the price offered if he wants to.

Now you see how absurd it would be to affirm one of these doctrines and disaffirm the other. The very basis of law on which the labor union exists contemplates that the man who does not belong to the labor union has the same right to exercise his own judgment as to the price at which he will sell his labor. When you consider all these things, the man's home necessities, the man's wants, the size of his family, his condition in life, whether or not he has a nest egg laid away, whether or not he has a bank account, is the controlling feature with him. One man moves from one motive and refuses; another man moves from another motive and says, "Yes, I will work at the price you offer; the wages are satisfactory and the conditions are satisfactory." Then we are up to the time when the law is called upon to decide whether the man or the group which refused to work shall say that the man who wants to work shall not work. You see what an absurdity it would be to affirm that doctrine.

This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trades of life, where the thing to be bought and sold is not

labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests, viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We wouldn't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does

not belong to your combination shall have the same right to work at a different rate. Now that is the law, and there is no other view to take of it. This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it. When the company several months later undertook to run on a different scale of wages they contracted with certain men, who did not belong to the union, to work for them. These men have said upon the stand they were willing to work; the wages were satisfactory; the conditions were satisfactory, but that they didn't work because they were afraid of the defendants.

Now a man who doesn't want to work at a certain wage has a right to withdraw; another man who does want to work under those conditions and for those wages has an equal right to work without being interrupted, and the first man shall not interfere with the second.

Work is the condition of us all. No man is of any account in this world without it; no matter what character the work may be. We are all workers or we are no good. Every man must judge for himself as to the contract of labor which is satisfactory to him. He may work, or he may decline to work, but he shall not interfere with his neighbor who desires to work, for the Government will protect such neighbor and a government that will not protect such a man isn't fit to live, and, in my judgment, will not permanently endure.

The proof here sustains the averments of the bill as to the illegal combination; such a combination

cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be violent or peaceful.

However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the condition under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get to him in the morning, or in the evening, or at the lnuch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law, and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There could be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to

him, you don't need a force of fellows to go with you.

Counsel for complainant may prepare an order finding the averments of the bill sustained and extending the injunction, making the restraining order an injunction against the union, its officers and all other persons who have had any part, as shown by the evidence, in the execution of the unlawful combination.

The injunction may go this much further; it may prohibit absolutely picketing for the purpose of executing this unlawful purpose. It may extend also to all persons who shall engage in helping or abetting the unlawful combination, whether the knowledge came to them before or after the issuing of this injunction. Let the injunction be printed and posted liberally in the vicinity of the works.

Perhaps I ought to say to you gentlemen who are the officers of the defendant union, that the court regards it as your duty to explain to those who are not here and to those who are here, if necessary, just what the purpose of this order is, and that it is their duty to obey it, for the court will find some means of enforcing its order.

Circuit Court of Appeals Opinion.

Before Mack, Alschuler and Evans, Circuit Judges.

Appellants, herein called defendants, appeal from the final decree entered in favor of appellee, herein called plaintiff, enjoining defendants as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents, and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Ardridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American

Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

Plaintiff instituted this suit to prevent alleged threatened injury to its business and threatened destruction of its manufacturing plant, located at Granite City, Illinois, claimed to be worth $1,000,000, which it alleges the Tri-City Trades Council, a labor organization and other defendants, former employees of plaintiff or members of the Council were injuring and threatening to destroy. It alleges the Tri-City Trades Council attempted to force plaintiff to raise the wage paid its employees, and to ac-

complish its object called a strike of plaintiff's employees. In the course of the strike picketing was resorted to, and the defendants sought the support of non-striking and prospective employees. Plaintiff further claimed that its employees were assaulted by defendants and by those engaged in picketing the shops, and that prospective employees had been so intimidated by defendants that they refused to enter plaintiff's employment.

The gravamen of the plaintiff's bill is found in the following, therefrom:

> "Your orator further represents that the said defendants have combined and conspired to prevent your orator from employing skilled laborers at its plant, although such skilled laborers and your orator have agreed upon terms of employment that are mutually agreeable and satisfactory; that in carrying out such combination and conspiracy the defendants began picketing said plant of your orator on or about April the 23d, 1914; that the said defendants on April 23d and since that time have caused various numbers of men or pickets, to wit: five to thirty men to be stationed adjacent to the main gate of your orator's said plant, which said pickets from that day until the present time have threatened to assault, mistreat and injure various of the employees of your orator unless said employees ceased from their work; that said defendants so combining did on April 29, 1914, cause two of your orator's employees to be assaulted by said pickets," etc.

Defendants denied any and all acts of violence or assaults of any nature. On the other hand, they claimed that strike-breakers attempted to shoot the striking employees, and were urged so to do by representatives of plaintiff.

Defendants also denied the existence of any unlawful conspiracy among them, but did admit

> "that said Tri-City Central Trade Council did place certain ones on certain streets and avenues leading to said plant charged with doing picket duty, but such ones were stationed 100 yards from such mill and they were instructed to notify all persons who sought to enter the plant, that there was a strike on, because of such reduction in wages, and such pickets were instructed to use all honorable means to persuade such ones to not enter such plant, and not to take the places of the laboring men, who had gone on a strike on account of such reduction of wages."

The District Judge in rendering his opinion said:

> "This evidence clearly shows that this union, this Trades Council, by the testimony of its officers entered upon the work of preventing this complainant from getting men to run its factory, run its plant except upon the condition that it pay a certain scale, the November scale. That combination was illegal."

Speaking of picketing, he said:

> "However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position, and having these cases frequently before me, has taught me that there is no such thing as peaceful picketing."

Defendants attack the decree on three grounds:

(a) The evidence does not justify the issuance of any injunction.

(b) The restraining order is too broad and restrains defendants from doing lawful acts.

(c) The Court is without jurisdiction, because the amount involved does not exceed $3,000.

Evans, Circuit Judge, delivered the opinion of the Court.

Defendants' claim that the court was without jurisdiction is without merit. The necessary diversity of citizenship appears. The amount involved exceeds $3,000. It was not necessary that $3,000 worth of property should be destroyed before the Federal Court acquired jurisdiction. The alleged threatened damage far exceeded the statutory sum necessary to give the District Court jurisdiction.

Defendants contend that the evidence did not justify the Court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the Court. It is apparent that a situation had developed where fights had occurred and threats had been made which if carried out would have resulted in the destruction of property. The district judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.

But the Court also enjoined the defendants:

> "from picketing or maintaining any picket or pickets on or about the streets leading to the premises of the plaintiff."

And the order continued:

> "It is further ordered * * * that the said defendants * * * be and are perpetually restrained and enjoined * * * from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and

> also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid."

The obvious effect and purpose of this decree was, among other things, to prevent all picketing by the defendants or others similarly interested, and to prevent these parties from persuading their fellow employees to join them in their effort to secure what the strikers apparently considered the laborers' just demands.

In *Iron Molders' Union*, 125, *Milwaukee*, v. *Allis-Chalmers Co.*, 166 Fed. 45, the rule is so well stated that we quote from it the following:

> "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished. In the guise of picketing, strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault. But from the evidence it can always be determined whether the efforts of the pickets are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgments. *Prohibitions of persuasion and picketing, as such, should not be included in the decree.*"

Labbatt in his work on Master and Servant, Vol. 7, page 8364, says:

> "Attendance in the vicinity of the employer's place of business for the purpose of obtaining information as to those at work there, or of communicating the information that a strike is in progress, to those who may resort for employment, is uniformly regarded as lawful even where the right to maintain pickets for the purpose of persuasion is denied."

The same writer further says:

> "The preponderance of opinion is to the effect that attendance even in numbers, for the purpose of lawfully persuading others not to work, is permissible, so long as it is not carried on in such a manner as to intimidate persons at work, or seeking employment, or to subject them to undue annoyance, or to interfere with the free access to the employer's premises."

Further authorities in support of the rule laid down in the *Iron Molders Union* v. *Allis-Chalmers Co., case, supra,* are *Gray* v. *Building Trades Council,* 91 Minn. 171; *Karges Furniture Co.* v. *A. W. Local Union,* 165 Ind. 421; *Everett* v. *Typo. Union,* 105 Va. 188; *In re Heffron,* 179 Mo. App. 639; *Jones* v. *Maher,* 116 N. Y. Supp. 1126; *Jones* v. *Van Winkle Gin & Mach. Works,* 131 Ga. 336; *Pope Motor Car Co.* v. *Keegan,* 150 Fed. 148.

But it is contended that the decree in these respects was proper because

(a) The restraining order does not prohibit picketing *per se,* but restrains defendants from carrying out an unlawful conspiracy to destroy plaintiff's business; that in order to prevent the defendants from accomplishing the unlawful object of the conspiracy, it was necessary for the Court to restrain the defendants from picketing the plaintiff's works, and prohibit them from arguing their cause with plaintiff's employees.

(b) Defendants were not plaintiff's employees, but were mere outsiders, intermeddlers who were not truly representing the employees, but were trouble makers, fomenting strife and trouble where labor conditions and wages were entirely satisfactory to the employees.

Plaintiff's contention that a court may restrain lawful acts of striking employees when committed to carry out the purpose of an unlawful conspiracy to destroy the employer's business is supported by many authorities. Among them are *Sailor's Union* v. *Hammond Lumber Co.*, 156 Fed. 450; *In re Debs*, 158 U. S. 564; *Barnes* v. *Typo. Union*, 232 Ill. 424; *Karges* v. *Woodworkers Union*, *supra*.

If the record disclosed the existence of an unlawful conspiracy on the part of the defendants to injure or destroy plaintiff's property the Court would be clearly justified in restraining lawful as well as unlawful acts committed in furtherance of such a conspiracy.

If the purpose of the undertaking complained of were purely and simply, or even primarily, interference with the plaintiff in the conduct of its business as alleged, no act however innocent in itself, directed to that end can be said to have a lawful purpose for its doing. Indeed, it may well be said that any act directed to that end is not a lawful act. If, on the other hand the object of the undertaking is unlawful, then the acts calculated to effectuate the object do not necessarily become unlawful merely because they interfere with the plaintiff's conduct of its business.

The right to strike to secure higher wages and improved conditions of labor is too firmly established to necessitate further elucidation. From the record here we can reach no other conclusion than that the object of this strike was to secure for plaintiff's employees the November wage scale of the union. Nothing appears in the record to indicate that this was not in good faith, or to raise the suspicion that the strike was a mere cloak to cover a deliberate

purpose to interfere with the plaintiff's conduct of its business, or to injure and destroy its business and property. The purpose being lawful, if unlawful means are used to effectuate it, such means cannot be made to reach back and taint the purpose itself with unlawfulness, and thus render unlawful all the acts in its furtherance.

In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed, as this Court has held, to ascertain whom the late employer:

> "has persuaded or attempted to persuade to accept employment,"

and persuasion may be used to induce them to refuse or quit the employment. As stated further in the *Allis-Chalmers case:*

> "The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. * * * Molders, having struck, in order to make their strike effective, may persuade (but not coerce) other molders not to work for less wages or under worse conditions than those for which they struck, and not to work for their late employer at all, so that he may be forced to take them back into his foundry at their own terms."

Undoubtedly picketing and persuasion would interfere with plaintiff's conduct of its business, in that it would make it more difficult for it to retain old employees and to hire and keep new ones. Indeed, the very act of striking often seriously interferes with that "free and unrestrained control and operation of the employer's business" which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the

strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike.

The laborer may be strictly within the rights although he obstructs the "free and unrestrained control and operation of the employer's business." The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employees by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business, any interference with that labor is an interference with the employer's business. But whether the interference with the business is lawful or unlawful depends upon the facts in each case.

The order in the instant case fails to recognize this difference between the *lawful* means of interfering with another's business as an incident to the party's own right and *unlawful* means adopted by the same party. Methods may be considered lawful even though the employer's business is interfered with, because such methods are incidental to the right of the employee, which right should be and is recognized as equal to the right of the employer.

Plaintiff's further contention that the defendants were not its employees at the time of the strike, and therefore had no right to picket or persuade by argument those about to enter plaintiff's employment is not well taken. It is true, a striker is not technically an employee. The relation of employer and employee is temporarily suspended during a strike. The situation has been described as

> "A relationship between employer and employee that is neither that of a general employer and employee, nor that of employer and employee seeking work from them as strangers."

Neither strike nor lockout fully terminates during the strike the relationship between the parties.

Among the defendants in this case there were some former employees. Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest. Under these circumstances, it cannot be said that the labor organization was an intermeddler or that its course was contrary to the wishes of its members or the wishes of the plaintiff's employees.

In so far as the decree restrains *all* picketing and *all* persuasion and all interference with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this Court for the modification of the decree in the *Allis-Chalmers case* will afford sufficient and proper guidance for the modification of the decree herein.

The decree of the District Court is reversed, with direction to modify the same, and to enter a decree, in accordance with the views herein expressed.

Original injunction decree in Allis-Chalmers Company vs. Iron Molders Union, No. 125.

CIRCUIT COURT OF THE UNITED STATES

Allis-Chalmers Company,
Complainant,
vs.

Iron Molders Union No. 125 of Milwaukee, Wis., Iron Molders Union No. 375 of South Milwaukee, Wis., Iron Molders Union No. 446 of Milwaukee, Wis., John R. O'Leary, William Schwab, Thomas R. Hanna, H. Harbicht, M. Katzbaum, Robert Winkler, John Merz, David Lonergan, William F. Weber, Edwin Lecher, Lally Kuchysky, Joseph Plaschek, E. A. Morrison, Peter Kuczynski, John Lutz, Patrick Devine, Lewis Faast, Jim Murphy, Geo. Anderson, Sr., Rud. Nau, Jno. Brzezan, Jim Donohue, Joe Stringer, Alb. Piotrowsky, Jno. F. Thomas, Rob. Emerson, Art. Ladwig, Rich. Venohr, Emanuel Dapper, John Hanley, Bern. Roosbeek, Claude Kahl, Dan Lonegran, Frk. Burzynski, Austin Slattery, Tom Tobin, Edw. Haacke, Gus. Priegel, Wm. Priegel, Hugo Bloecker, Tom Maynard, Peter Van Shooten, Joe Stahoviak, Pete Kramer, Mike Kelly, Edw. Bryan, Jos. Whittington, Paul Paulsen, Louis C. Miller, Wm. Halpin, Henry Finger, Wm. Bluhm, Herman Dempke, E. Lang, B. Marren, J. Alter, G. Anderson, John Schafe,
Defendants.

In and for The Eastern District of Wisconsin.

This cause came on to be heard at this term of court and was argued by Turner, Hunter & Goff with W. J. Turner as counsel for complainant, and Rubin & Zabel for defendants; and thereupon it is ordered and decreed by the court that the defendants IRON MOLDERS UNION NO. 125 of Milwaukee, Wis., IRON MOLDERS UNION NO. 375 of South Milwaukee, Wis., IRON MOLDERS UNION NO. 446 of Milwaukee, Wis., JOHN R. O'LEARY, WILLIAM SCHWAB, THOMAS R. HANNA, HENRY HARBICHT, M. KATZBAUM, ROBERT WINKLER, JOHN MERZ, DAVID LONERGAN, WILLIAM F. WEBER, EDWIN LECHER, LALLY KUCHYSKY, JOSEPH PLASCHEK, E. A. MORRISON, PETER KUCZYNSKI, JOHN LUTZ, PATRICK DEVINE, LOUIS FAAST, JIM MURPHY, GEORGE ANDERSON, SR., RUD. NAU, JNO. BRZEZAN, JIM DONOHUE, JOE STRINGER, ALBERT PIOTROWSKY, JNO. F. THOMAS, ROB. EMERSON, ART. LADWIG, RICH. VENOHR, EMMANUEL DAPPER, JOHN HANLEY, BERN. ROOSBEEK, CLAUDE KAHL, DAN LONERGAN, FRK. BURZYNSKI, AUSTIN SLATTERY, TOM TOBIN, EDWARD HAACKE, GUS PRIEGEL, WILLIAM PRIEGEL, HUGO BLOECKER, TOM MAYNARD, PETER VAN SHOOTEN, JOE STAHOVIAK, PETE KRAMER, MIKE KELLEY, EDW. BRYANT, JOS. WHITTINGTON, PAUL PAULSEN, LOUIS C. MILLER, WILLIAM HALPIN, HENRY FINGER, WM. BLUHM, HERMAN DEMPKE, E. LANG, B. MARREN, J. ALTER G. ANDERSON, and each of them, their confederates and each and every one of them, and the serv-

approaches adjoining or adjacent to or leading to said premises, and from picketing the said complainant's places of business or the homes or boarding houses or residences of the said complainant's employees.

6. From interfering with the said company's employees in going to and from their work.

7. From going singly or collectively to the homes of the said company's employees for the purpose of intimidating or threatening them or collectively persuading them to leave its service.

8. From enforcing, maintaining or aiding any illegal boycott against the said company, its agents or employees.

9. From endeavoring to illegally induce people not to deal with the said company, its agents and employees.

10. From perventing or attempting to prevent by threats, intimidation, persuasion or in any other manner any person or corporations from performing work for said complainant and from doing business with it.

11. From intimidating or threatening in any manner the wives and families of said employees at their homes or elsewhere.

12. From doing any of the aforesaid acts or any other acts for the purpose of compelling and inducing or attempting to compel or induce the complainant by threats, intimidation, force or violence, against its will or the will of its officers, to employ or to discharge any person or persons whomsoever and especially to employ members of said unions or discharge persons who are not members of said unions.

ants and agents of the said defendants and each of them, and all persons aiding or abetting said defendants or any of them, and all persons now or hereafter aiding or abetting said defendants or any or either of them, and all persons now or hereafter confederating with or acting in concert with said defendants or either or any of them, or their servants or agents, refrain and desist

1. From in any manner directly interfering with, hindering, obstructing, or stopping the business of the said complainant, or its agents, servants or employees, in the maintenance, conduct, management or operation of its business.

2. From compelling or inducing or attempting to compel or induce by threats, intimidation, force or violence any of the said company's employees to fail or refuse to work for it, or to leave its service.

3. From preventing or attempting to prevent any person or persons by threats, intimidation, force or violence, from freely entering into or continuing in the said company's service.

4. And from congregating upon or about the company's premises or the streets, approaches and places adjacent or leading to said premises for the purpose of intimidating its employees or preventing or hindering them from fulfilling their duties as such employees or for the purpose or in such manner as to induce or coerce by threats, violence, intimidation or persuasion, any of the said company's employees to leave its service or any person to refuse to enter its service.

5. From congregating upon or about the company's premises or the sidewalk, streets, alleys or

13. From combining, associating, agreeing, mutually undertaking, concerting together or with other persons for the purpose of doing or causing to be done any of the aforesaid prohibited acts.

14. From combining, associating, agreeing, mutually undertaking, concerting together or with other persons for the purpose of preventing or hindering the complainant from doing or performing any unlawful act in the conduct of its aforesaid business or for the purpose of injuring the complainant in its aforesaid business, or of compelling the complainant against its will from doing or performing any lawful act or from injuring the said complainant in its trade and business.

15. From directing and abetting or counselling any acts whatsoever or in any manner whatsoever the conspiracy and combination found by the court to exist, to prevent the complainant and its officers and employees in the free and uninterrupted control and direction of its business and affairs and to prevent the complainant from doing or performing any and all lawful acts in the conduct of its business and to compel the complainant against its will from doing and performing its lawful business and to prevent the complainant from doing or performing all lawful acts in the conduct and management of its business.

16. From by threats, intimidation, persuasion, force or violence compelling or attempting to compel or induce any of the apprentices in the employ of the said complinant to break their contracts and leave the employ of the said complainant.

And it is FURTHER ORDERED and DECREED that the said complainant be allowed its

full costs in this suit taxed at the sum of Four Hundred and thirty-eight dollars and twenty-nine cents, for which execution will issue, except as against the defendant unions.

Dated, May 20, 1907.

BY THE COURT:—

(Signed) A. L. SANBORN,

Judge.

Let the foregoing decree be entered.

(Signed) A. L. SANBORN,

Judge.

May 20, 1907.

Endorsed: "Signed, recorded and enrolled
May 20, 1907.
Edw. Kurtz, Clerk."

Modified injunctive decree in Allis-Chalmers Company vs. Iron Molders Union, No. 125.

UNITED STATES CIRCUIT COURT

FOR THE EASTERN DISTRICT OF WISCONSIN.

ALLIS-CHALMERS COMPANY, *Complainant,*
vs.
IRON MOLDERS UNION No. 125, of Milwaukee, Wis., *et al.*, *Defendants.*
} In Equity.

Before Honorable JOSEPH V. QUARLES, District Judge. February 23, 1909.

This day came the defendants' counsel, Mr. W. B. Rubin and presented to the court a mandate of the U. S. Circuit Court of Appeals for this Circuit, setting forth that "in the term of October, in the year of our Lord one thousand and nine hundred and eight the said cause came on to be heard before the said United States Circuit Court of Appeals for the Seventh Circuit, on the said transcript of record and was argued by counsel; on consideration whereof, it is now ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be and the same is hereby reversed; and that this cause be and the same is hereby remanded to the said Circuit Court with directions to modify the decree by striking out "persuasion" and "persuading" from the fourth and seventh paragraphs; further modified by adding after "picketing" in the fifth paragraph "in a threatening or intimidating manner"; and it is further ordered that the said decree be vacated as to the

1st, 8th, 9th, 10th, 14th and 15th paragraphs, and the said decree is hereby affirmed as to the 2nd, 3rd, 6th, 11th, 12th, 13th, 16th and the modified 4th, 5th, and 7th paragraphs. And it is further ordered that the costs of this Court be divided equally."

Whereupon it is ordered by this Court that execution be and hereby is awarded against the complainant, Allis-Chalmers Company for the sum of Four hundred fifty-one dollars and ninety-four cents, one-half the costs in the said U. S. Circuit Court of Appeals.

GENERAL NO. 25809. FORM NO. 2

Office Supreme Court
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JAMES D. MAHER
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IN THE

Supreme Court of the United States

October Term 1918.

AMERICAN STEEL FOUNDRIES,
Petitioner,

v.

THE TRI-CITY CENTRAL TRADES COUNCIL, et al.
Respondents.

SUPPLEMENTAL BRIEF FOR PETITIONER

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

C. G. Burgoyne Printing Business, 123 Liberty St., New York.

General No. 25809. Term No. 13.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1918.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, *et al.*,
Respondents.

Supplemental Brief for Petitioner.

I.

On the former oral argument counsel for petitioner shortly before the close of his argument was asked by one of the justices, if he had given consideration to the effect of the "CLAYTON ACT" upon the case. Counsel replied that he had not, that the question had not been raised either in the District Court or in the Circuit Court of Appeals nor in this Court. Counsel, however, proceeded to address himself to the inquiry when his time under the rules expired and further opportunity for reply was closed. In view of this occurrence, we assume that one of the reasons for re-argu-

ment was to permit the question as to the effect of the Clayton Act upon this case to be discussed by counsel, and we therefore at the moment address ourselves to that subject.

The final decree granting the Petitioner a permanent injunction was entered on the **9th day of June, 1914.**

The legislation known as the Clayton Act became law on **October 15, 1914.**

It will be noted that the rights of the Petitioner by final judgment and decree were definitely and formally fixed and vested **before the Clayton Act became law.**

Before discussing the Clayton Act and its general applicability to the facts and law of the case, we desire to present the point that no retroactive effect can be given to the Clayton Act so as to affect the final decree and judgment entered prior to its enactment.

This proceeding is not one involving a relationship between an individual and the federal government or the state government or the public as such, in any way whatsoever. It is a controversy between private parties, namely, the petitioner and the respondents. While it may be contended that legislation subsequent to adjudication in proceedings between public bodies or between an individual and the public, because each one doing business with the federal government or the state government is more or less subject to legislation affecting the relationship, no such rule can apply in a controversy or proceeding between private parties.

This court passed upon that question in the case of the **State of Pennsylvania v. Wheeling & Belmont Bridge Co.,** 59 U. S. 421. The Court says at page 431:

> "Now, we agree, if the remedy in this case had been an action at law, and a judgment rendered in favor of the plaintiff for damages, the right to these would have passed beyond the reach and the power of Congress. It would have depended, not upon the public right of free navigation of the river but upon the judgment of the Court. The decree before us so far as it respect the costs adjudged stands upon the same principles and is unaffected by the subsequent law."

That case involved, as the court will note, matters relating to a public improvement constructed and maintained under acts of Congress and therefore involved a controversy between an individual and the federal government, and in that respect differs from the instant case; and yet, even in that case, the Court said at page 431:

> "But it is urged, that the act of Congress cannot have the effect and operation to annul the judgment of the Court already rendered, or the rights determined thereby in favor of the plaintiff. This, as a general proposition, is certainly not to be denied, **especially as it respects private rights of parties. When they have passed into judgment the right becomes absolute, and it is the duty of the Court to enforce it."**

In the dissenting opinion of Mr. Justice Grier is the following at page 449:

> "I concur with my brother MacLean that Congress cannot annul or vacate any decree of this Court; that the assumption of such power is without precedent, and as a precedent for the future it is a dangerous example."

A final judgment or decree is property just as much as any other form of property. The right

of property and the protection thereof is a vested estate and such judgment or decree should not be subject to subsequent legislation, especially if such legislation involves not only remedies but rights. In this case both are involved.

Suppose there had been no appeal from the final decree in this case and a violation of the permanent injunction had occurred and the defendants charged with such violation were brought to the bar of the Court for contempt, could defendants so charged relieve themselves by pleading in defense the subsequent enactment of the Clayton Act? Can Congress affect or stay the enforcement of a subsisting order, injunction or decree of a Court having jurisdiction of the parties and the subject matter? And, indeed, as applied to the case at bar, can Congress affect the subsisting order, judgment or decree of a Court of competent jurisdiction, having jurisdiction of the persons and subject matter in a suit involving the construction and application of the statutes of the State of Illinois?

Besides, there is nothing in the Clayton Act making the provisions thereof operative retrospectively. Not only is there a presumption that the law was to become operative prospectively but to have it otherwise would require a clear and unmistakable expression of legislative intention to that effect. There is nothing in the Clayton Act to warrant the application or operation thereof, other than prospectively.

In the case of **Memphis v. United States,** 97 U. S. 293, this Court said at page 296:

> "In this case the relator recovered his judgment against the city on the 16th of March, 1875. Into that judgment his contract was merged, and it no longer had any legal ex-

istence. If, as asserted by Blackstone, the judgment was itself a contract, the remedies for its enforcement, existing at the time when it was recovered, could not be taken away either by direct legislation, or indirectly, by repealing the law which gave those remedies. And if the judgment may not be considered a contract of record, still the vested rights it gave to the relator, whatever they were, are equally secure against legislative invasion."

and on page 298 this Court quoting **Fisher's Negroes v. Dabbs** (6 Yerg. (Tenn.) 119), said:

> "A distinction between the right and the remedy is made and exists. But where the remedy has attached itself to the right, and is being prosecuted by due course of law, to separate between them and take away the remedy is to do violence to the right, and comes within the reason of that provision of our Constitution which prohibits retrospective, or, in other words, retroactive, laws from being passed, or laws impairing the obligation of contracts."

In the case of **Livingston v. Livingston,** 173 N. Y. 377, the New York Court of Appeals involving a similar question said, at page 381:

> "By the decree, in this action, the obligation, before resting upon the husband for the support and education of the children and for the support of his wife, was changed. It, thereafter, was made to rest upon the wife and the decree adjudged that the husband should pay to her a certain fixed sum of money in a certain manner, in lieu of his previous obligation. The judgment defined and created a new obligation on his part and as the amendment of the statute, necessarily, affected the wife's right to compel exact performance and bore upon the obligation, to her possible injury, it was obnoxious to the constitutional

prohibition. It would be absurd to call it remedial, as affecting merely a remedy upon the decree. Even then, it would violate a substantial right of the plaintiff. It was, however, in fact, the impairment of, or interference with a vested right conferred by a final judgment. The plaintiff's protection in the enjoyment of her right under the decree is not, necessarily, referable to the prohibition in the Federal Constitution against the impairment of the obligations of contracts. It is not at all necessary, for the plaintiff's purposes, that the judgment of divorce should be deemed a contract. A judgment is not a contract, in the ordinary sense of an agreement reached between persons, to whose terms their mutual assent has been given, and it is in that sense that the word is used in the Federal Constitution. **(State of Louisiana v. Mayor of New Orleans,** 109 U. S. 285.) A judgment creates an obligation of the highest nature known to the law and it is enforceable against the judgment debtor as upon his promise to perform it; but that promise is only implied by law. The obligation is imposed; it is not assumed voluntarily. But a final judgment creates and vests substantial rights, and, if the statute were allowed this retroactive effect, a new stipulation would be imported into it, in effect, that the defendant's obligation might be changed upon showing subsequently occurring facts."

In the case of **Humphrey v. Gerard,** 83 Conn. 346, the Court said at page 352:

"The most apparent answer to this contention is found in the fact that the statute is not a retrospective one. The presumption is that statutes are intended to operate prospectively. They should never be construed as having a retrospective effect unless their terms show clearly and unmistakably a legislative intention that they should so operate."

Further cases of similar import are:

Strafford v. Sharon, 61 Vt. 126.
Merchants Bank v. Ballou, 98 Va. 112.
Mills v. Charlton, 29 Wisc. 400.
Miller v. Jackson, 78 Ind. 503.

II.

We insist that the Clayton Act for other reasons must be held to be inapplicable and ineffective.

The Clayton Act cannot be made applicable to the instant case. **This is not a case involving or growing out of a dispute concerning terms or conditions of employment (a) between employer and employees, (b) or between employers and employees, (c) or between employees (d) or between persons employed and persons seeking employment.**

There was no strike at this plant instituted by the employees or with the authority of the employees.

There was no controversy or dispute between the petitioner and its employees. See testimony of Walcher, printed record, page 25: **"From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to the petitioner from any of the employes with regard to wages."**

Only two of the employees left the employ of the petitioner and neither because of any strike of the employees.

Churchill was one of the employees who left. He testified, printed Record, page 53:

> "At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had

to take at the time being and I haven't had anything better since. I didn't get a better job. **I quit because these fellows asked me to go out."**

Cook, the other employee, leaving his employment, testified at page 56 of the Printed Record:

"I am an electrician and belong to none of the unions. I worked at the plant about three weeks after it started up. * * * I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, **and I quit because they said there was a strike on."**

No other employee out of the entire body of workmen left their employment.

The strike at the plant of petitioner was instigated by the respondent, the Tri-City Central Trades Council, an utter stranger to the petitioner, as disclosed by the strike notice in the form of a hand-bill as follows:

"UNION MEN AND ALL LABOR STAY AWAY FROM THE AMERICAN STEEL FOUNDRY, GRANITE CITY, ILL., ALL TRADES ARE ON STRIKE

For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.

By Order of Ways and Means
COMMITTEE OF TRI-CITY CENTRAL TRADES COUNCIL,
Endorsed by Tri-City Trades Council."

This organization did not act or speak for the employees of the petitioner, nor had it authority to act for them nor was the strike instigated by this organization subsequently approved by the employees of petitioner. On the contrary the Tri-City Central Trades Council through its officers and agents, a stranger both to the petitioner and its employees, sought to force the employees to violate their contracts and leave the employ of the petitioner, by arbitrarily instigating and wantonly prosecuting an unauthorized, illegal, brutal and criminal strike. See testimony of Walcher, Printed Record, page 41:

> "Earl Galloway was admitted to my office and told me there was a Committee that represented the labor organizations; **I asked him if the Committee represented our employees and he said they did not,** and I told him we didn't recognize any labor organizations; we had never had any complaints or demands from any of our employees."

Earl Galloway, President of the Tri-City Central Trades Council testified, Printed Record, Page 44:

> "As Chairman I went in to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of, that none of his employees had said anything to him that they were dissatisfied; **he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions;** he stated that he would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievance to come in as individuals and they would treat with them, so I told him that if

that was the way he felt about it I would have to report the same back."

This was about the 20th or 21st of April. **It was reported back to the joint board and a strike was declared on the plant.** Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts, I believe."

III.

Section 20 of the Clayton Act is further inapplicable to the instant case because of the facts disclosed in the record conclusively establishing that an injunction was necessary to prevent irreparable injury to property or to a property right of the petitioner and for which injury there was no adequate remedy at law.

The purpose of the strike instigated by the Tri-City Central Trades Council is indicated in the testimony of the defendant Cook at page 56 of the Printed Record as follows:

> **"I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade the men not to take the places of the strikers the Company would restore the wages. I was trying to make them restore the wages or close down the plant."**

A further indication of the purpose of this strike is disclosed in the brief of counsel for the respondent in answer to the petition for **certiorari** at page 35 as follows:

> **"And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is."**

A further indication of the purpose of the strike

is disclosed in the testimony of Mr. Walcher at page 30 of the Printed Record as follows:

> **"As works manager threats had been carried to me by third persons from the pickets to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end."**

and again at page 30:

> **"I was told a statement had been made that the plant was going to be burnt.** The plant is of various construction, some combustible and some non-combustible. The frame of the plant is wood in a great many cases, and one of the large buildings is an entire wood building."

On the trial no denial was made of the threat to destroy and burn the works of petitioner, either by any of the respondents, or by the witnesses testifying for respondents.

Of course the provisions of the second paragraph of Section 20 have relation only to the kind of cases and situations cognizable under the first paragraph. This case not coming within the provisions of the first paragraph of Section 20 is therefore not subject to the admonitory inhibitions against the issuing of a restraining order or injunction set forth in the second paragraph.

IV.

It is believed this Court has already decided, that Section 20 of the Clayton Act is not applicable to cases such as the instant case. In the report of the case of **Paine Lumber Co. v. Neal, 244 U. S. 459,** the contentions and arguments of counsel for the respective parties disclose, that, the ap-

plication of Section 20 of the Clayton Act was urged and resisted by respective counsel. The dissenting opinion of Mr. Justice Pitney, concurred in by Mr. Justice McKenna and Mr. Justice Vandeventer goes very fully into that question at pages 480 *et seq.* and we quote liberally from pages 483 *et seq.*:

"The suggestion, in behalf of defendants, that Section 6 of the Clayton Act establishes a policy inconsistent with relief by injunction in such a case as the present, by making legitimate any acts or practices of labor organizations or their members that were unlawful before, is wholly inadmissible. The section prohibits restraining members of such organization from **"lawfully** carrying out the **legitimate** objects thereof". What these are, is indicated by the qualifying words: "instituted for the purposes of mutual help, and not having capital stock or conducted for profit". But these are protected only when "lawfully carried out". The section safeguards these organizations while pursuing their **legitimate** objects by lawful means, and prevents them from being considered, merely because organized, to be illegal combinations or conspiracies in restraint of trade. The section, fairly construed, has no other or further intent or meaning. A reference to the legislative history of the measure confirms this view. House Rep. No. 627, 63d Cong. 2d sess., pp. 2, 14-16; Senate Rep. No. 698, 63d Cong. 2d sess, pp. 1, 10, 46. **Neither in the language of the section, nor in the committee reports, is there any indication of a purpose to render lawful or legitimate anything that before the act was unlawful, whether in the objects of such an organization or its members or in the measures adopted for accomplishing them.**

It is altogether fallacious, I think, to say that what is being done by the present defendants is

done only for the purpose of strengthening the union. Conceding this purpose to be lawful, it does not justify or excuse the resort to unlawful measures for its accomplishment. **A member of a labor union may refuse to work with non-union" "men, but this does not entitle him to threaten manufacturers for whom he is not working, and with whom he has no concern, with loss of trade and a closing of the channels of interstate commerce against their products if they do not conduct their business in a manner satisfactory to him.**

And the suggestion that, before the Clayton Act, unlawful practices of this kind were usually and notoriously resorted to by labor unions, and that for this reason Congress must have intended to describe them as "legitimate objects", and thus render lawful what before was unlawful, is a libel upon the labor organizations and a serious impeachment of Congress.

Nor can I find in Section 20 of the Clayton Act anything interfering with the right of complainants to an injunction. It refers only to cases "between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment". These words evidently relate to suits arising from strikes and similar controversies, and the committee reports upon the bill bear out this view of the scope of the section. But this is not such a suit. There is no relation of employer and employee, either present or prospective, between the parties in this case. Defendants who are employees are in one branch of industry in New York City; complainants are employers of labor in another branch of industry in distant

States. Nor is there any dispute between them concerning terms or conditions of employment. Section 20 prohibits an injunction restraining any person "from ceasing to patronize or to employ" "any party to **such dispute,** or from recommending, advising, or persuading others by **peaceful and lawful** means so to do; * * * or from peaceably assembling **in a lawful manner, and for lawful purposes;** or from doing any act or thing **which might lawfully be done in the absence of such dispute** by any party thereto."

Clearly, this provision is limited to the participants in a dispute of the character just indicated. And, quite as clearly, only "lawful" measures are sanctioned—that is, of course, measures that were lawful before the act. There is no grant, in terms or by necessary inference, of immunity in favor of a boycott of traders in interstate commerce, violative of the provisions of the Sherman Act, to which the Clayton Act is supplemental." (Emphasizing ours.)

In the opinion of Mr. Justice Holmes written for the majority of the Court he says on this subject at page 471:

> "Personally I lay those questions on one side because, while the Act of October 15, 1914, c. 323, Par. 16, 38 Stat. 730, 737, establishes the right of private parties to an injunction in proper cases, in my opinion it also establishes a policy inconsistent with the granting of one here. **I do not go into the reasoning that satisfied me because upon this point I am in a minority."** (Emphasizing ours.)

From this expression it is clear that upon this particular question the majority of the Court con-

curs in the views expressed in the dissenting opinion of Mr. Justice Pitney.

Under the decision in **Paine Lumber Co. v. Neal** *supra*, this Court also held in substantially the following language, the Clayton Act is not applicable here because the Clayton Act could not be given a retrospective effect to the new statute for the relief granted operates only **in futuro.**

That to give retrospective effect to the Clayton Act would establish a policy inconsistent with relief by injunctions in such a case as the present by making legitimate any acts or practices of labor organizations or their members that were unlawful before which would be wholly inadmissible. That there is no indication of a purpose on the part of Congress in the enactment of the Clayton Act to render lawful or legitimate anything that before the act was unlawful whether in the objects of such organization or its members or in the measures adopted for accomplishing them, and that the suggestion that before the Clayton Act unlawful practices of the kind disclosed in this record and which were usually and notoriously resorted to by labor unions and that for this reason Congress must have intended to describe them as 'legitimate objects' and thus render lawful what before was unlawful, is a libel upon the labor organizations and a serious impeachment of Congress, and that the Clayton Act interfering with the right of complainants to an injunction refers only to cases "between employer and employees or between employers and employees or between employees or between persons employed and persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment."

We believe that the case at bar comes within the rulings of this Court in **Eagle Glass & Mfg. Co. v. Rowe,** 245 U. S. 275 and **Hitchman Coal & Coke Co. v. Mitchell** *Ibid,* 232.

It is not disclosed in the reports of these cases whether or not the applicability of the Clayton Act was presented to or urged upon the Court. It is fairly inferable, however, that such was the case. It would seem hardly possible that in a case so fully argued as **Hitchman v. Mitchell,** supra, the Clayton Act and its effect upon the case were not considered, especially since this Court had so fully considered the application thereof to similar facts. **Paine Lumber Co. v. Neal,** *supra,* argued and decided before the decisions in **Hitchman v. Mitchell,** *supra,* and **Eagle Glass & Mfg. Co. v. Rowe,** *supra.* Indeed, the following expression appears in the opinion of Mr. Justice Pitney in the **Hitchman** case at page ——: "Needless to say there is no act of legislation to which defendants may resort for justification," as referred to in the case of **Montgomery v. Pacific Railway Co.,** 258 Fed. Rep., page 389.

Of course it is altogether possible in view of the decision in the **Paine Lumber Co. v. Neal,** *supra,* that the Clayton Act could have **no retrospective effect,** it was deemed inapplicable to those cases, and for the same reason it would be inapplicable to the instant case.

The effect of the Clayton Act upon cases arising out of "strikes" has been considered in a number of instances in the federal courts and notably in the following cases:

Stephens v. Ohio State Telephone Co., 240 Fed. Rep. 759. See pages 769, et seq. And having reference to what may fairly be defined as "peaceful" and "lawful" action, the Court submitted the following inquiries:

"What constitutes peaceful picketing may be answered by any fair-minded man, if this question is asked, 'Would this be lawful if no strike existed?'

"We accept this as a very good test and apply it to the concrete questions of fact arising in this case, as propounded in the several informations, with conclusions certain to come to every 'fair-minded man.' **Suppose no strike were in progress—**

"Would it be lawful for one or more men to use offensive, abusive, insulting or threatening language to another or others—for one to call another a 'rat,' a 'scab,' a 'thief,' an 'outcast' or by any other name commonly accepted as offensive or degrading or calculated to provoke the other to break the peace in resentment?

"Would it be lawful for one man or more to take station adjacent to the place of rent, lodging, or work of another or others, and there, by gesture, language, or otherwise, convey to the other insult or threat?

"Would it be lawful for one or more men to force his or their talk upon the unwilling ear of another—to compel him to listen against his will?

"Would it be lawful for one man or more to persistently follow another to and from his work, to his home or lodging and about the city, forcing upon him unwillingly their presence, without occasion other than to unmistakably suggest to him their hostility unless he meets their views?

"Would it be lawful for one to photograph another against his will, especially under circumstances which indicate unfriendliness to be the spirit, and a hostile use of the photograph to be the object?

"Would it be lawful to slink upon an unsuspecting man, inoffensively gazing into a shop window, and deal him a blow—to step from the hiding of an alley to trip a lady, and

then to strike her escort as he stoops to her assistance?

"These questions are formulated upon the testimony produced in open court, because of which attachments were issued under the law, resulting in the filing of informations against which counsel for respondents has presented the motions we are considering."

Lawlessness, intimidation and brutality, under the guise of "peaceful picketing", and sought to be defended and exonerated by counsel for respondents were much stronger in the case at bar than those disclosed in the inquiries propounded in the opinion in **Stephens v. Ohio State Telephone Co.,** *supra.*

Also in **Duplex Printing Press Co. v. Deering, et al.,** 252 Federal Rep. at page 722 where the subject is exhaustively and we believe persuasively treated in the opinion of Justice Rogers who announced the decision of the case. His opinion, however, was the minority opinion. Judge Hough, speaking for the majority in making reference to the effect and application of Section 20 of the Clayton Act says at page 747:

"The solution of the puzzle raised by a statute so blindly drawn as this one is not easy, and the intimation as to the present division of the Supreme Court on the subject, given (purely obiter) in Paine etc. Co. *v.* Neal 244 U. S. 459, 37 Sup. Ct. 718, 61 L. Ed. 1256, merely adds embarrassment. There is no ruling decision on the subject, and prognosis as to the probable disposition of the matter in a higher court, based on anything as yet published in the United States Reports, would be both unprofitable and improper. It is necessary to form opinion as upon new matter."

Judge Hough either disregarded or failed to

note the statement of Mr. Justice Holmes upon this subject in **Paine Lumber Co. v. Neal** at p. 471:

> "Personally I lay those questions on one side because, while the Act of October 15, 1914, c. 323, Par. 16, 38 Stat. 730, 737, establishes the right of private parties to an injunction in proper cases, in my opinion it also establishes a policy inconsistent with the granting of one here. **I do not go into the reasoning that satisfies me because upon this point I am in a minority."**

Also in the case of **Montgomery v. Pacific Electric Railway Co.,** 258 Fed. Rep. 382. We ask the Court's attention to the language of the opinion at page 388, etc., seq. The Court says, p. 389 as follows:

> "That the order here appealed from accords with the decision in the case cited is expressly conceded in the brief for the appellants, where it is declared that—
>
> "The injunction approved by the Supreme Court in the Hitchman Case does the same violence to the provisions of the Clayton Act as does the order at bar."

And again:

> "Certain it is that the provisions of the Clayton Act and the decision in the Hitchman case cannot be reconciled."
>
> "Nor is it true that the Supreme Court made in the case cited no reference to the Clayton Act; for, notwithstanding the fact that that act was pressed upon its consideration, the court, in the course of its elaborate opinion, expressly declared it 'needless to say there is no act of legislation to which defendants may resort for justification.' "

The latest case is **Dail-Overland Co. v. Willis**

Overland, 263 Fed. Rep. (Advance Sheets May 6, 1920) 171. The Court says at Page 185:

> "Complainant is not here seeking relief upon the same grounds which the Overland might occupy should it appeal to a court. Unless the law was modified by the passage of the so-called Clayton Act (Act Oct. 15, 1914, c. 323, 38 Stat. 730), it must be held that the complaint states a cause of action of conspiracy, reprehended by the Sherman Act of July 2, 1890, c. 647 (Comp. St. Sec. 8820 et seq.) under the authority of Loewe *v.* Lawlor, 208 U. S. 274 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and Gompers *v.* Buck's Stove & Range Co., 221 U. S. 418, 31 Sup. Ct. 492, 55 L. Ed. 797, 34 L. R. A. (N. S.) 874. On page 438 of the latter decision (31 Sup. Ct. 497 [55 L. Ed. 797, 34 L. R. A. (N. S.) 874]) the Court says:
>
> "'The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained. To hold that the restraint of trade under the Sherman Anti-Trust Act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined, would be to render the law impotent. * * * But the very fact that it is lawful to form these bodies [labor organizations], with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution, or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government

to protect the one against the many, as well as the many against the one.'

"The acts charged against the alleged coconspirators in this case to have been in contemplation as agencies to effect the conspiracy, and also committed to further that conspiracy, were morally much more reprehensible than those charged against the alleged conspirators in the cases cited; **also in the present case the labor defendants are charged with conspiring to induce the employees of the Overland to break their contracts with the latter.** Consequently the case is within the scope of Hitchman Coal Co. *v.* Mitchell, and Eagle Glass & Mfg. Co. *v.* Rowe, reported in 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, and 245 U. S. 273, 38 Sup. Ct. 80, 62 L. Ed. 286, respectively.

"Does the Clayton Act change the law in any way, so as to affect the application here of the cases above cited? We are unable to see that it does, for we see nothing in this case that brings into pertinency the statement with which section 6 of that act (Comp. St. Sec. 8835f) begins, 'that the labor of a human being is not a commodity or article of commerce'; nor are the other provisions of section 6 applicable here. We are not asked here 'to restrain individual members of such organizations [labor organizations and others named] from **lawfully** carrying out the **legitimate objects thereof,** nor are we asked to declare the labor organizations named as defendants in this case 'to be illegal combinations of conspiracies in restraint of trade.' The things which the labor defendants are alleged to have in mind to accomplish the purposes of their alleged conspiracy, and the things which are alleged to have been done in furtherance of that conspiracy by way of overt acts, cannot, by the wildest stretch of imagination, be considered to be 'lawfully

> carrying out the legitimate object' of such organizations. Intimidation, violence, bloodshed, cannot be said to be lawful means to the effecting of legitimate objects of a labor organization, nor can it be said that the acts alleged to have been in contemplation and to have been put in practice as agencies of the alleged conspiracy were remotely within the privileges of peacefully persuading and lawfully assembling accorded to persons engaged in a labor controversy by section 20 of the Clayton Act (Comp. St. Sec. 1243d)."

It was proved beyond peradventure that the property and plant of petitioner were being injured and were imperilled by the acts of the respondents. Section 20 of the Clayton Act not only eliminates from its operation actions for injunction to prevent irreparable injury to property, but also to property rights. The opportunity and the right to carry on and conduct business is an established right and is a valuable property right. Interference with and invasion of this right legally pursued can be restrained even under the express language of Section 20 of the Clayton Act.

To carry on and operate its business, petitioner required as shown by the record the services and labor of workers. The petitioner had the legal right to the enjoyment of the work and activities of the men employed by it, and any interference therewith was an illegal interference and was subject to injunction. The effort of the respondents by "striking" the plant of the petitioner, forcing its employees to leave their work and its service and the interference with the employees, were an illegal effort to secure the violation of the employment contract between the petitioner

and its employees, were injurious to the business and the property and the property rights of the petitioner and subject to injunction.

It is not necessary there should be or that there should be proved, time contracts between the petitioner and its employees. Employment at will is sufficient. The petitioner is legally entitled to the employment of his employees under employment contracts at will and to the good-will resulting therefrom. This was decided by this court in the **Hitchman case,** *supra.* This court said in that case at page 251:

> "Plaintiff, having in the exercise of its undoubted rights established a working agreement between it and its employees, with the free assent of the latter, is entitled to be protected in the enjoyment of the resulting status, as in any other legal right. That the employment was 'at will,' and terminable by either party at any time, is of no consequence. In **Traux v. Raich,** 239 U. S. 33, 38, this court ruled upon the precise question as follows: 'It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion, and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will.' (Citing many cases.)
>
> "In short, plaintiff was and is entitled to the good will of its employees, precisely as a merchant is entitled to the good will of his

customers although they are under no obligation to continue to deal with him. The value of the relation lies in the reasonable probability that by properly treating its employees, and paying them fair wages, and avoiding reasonable grounds of complaint, it will be able to retain them in its employ, and to fill vacancies occurring from time to time by the employment of other men on the same terms. The pecuniary value of such reasonable probabilities is incalculably great, and is recognized by the law in a variety of relations. See **Brennan v. United Hatters** (cited with approval in **Traux v. Raich,** *supra*), 73 N. J. L. 729, 749; **Brown v. Honiss,** 74 N. J. L. 501, 514 *et seq.*; **Jersey City Printing Co. v. Cassidy,** 63 N. J. Eq. 759, 767; **Walker v. Cronin,** 107 Massachusetts, 555, 565-566; **Moran v. Dunphy,** 177 Massachusetts, 485, and cases there cited; **L. D. Wilcutt & Sons Co. v. Driscoll,** 200 Massachusetts, 110, 117, etc."

We insist under the facts of this case the Clayton Act especially under the rulings of this Court, can in no way affect the right of the petitioner to maintain the permanent injunction awarded to it in the final decree entered in this case by the District Court.

V.

In our Brief and Argument heretofore filed we insisted that the petitioner was entitled to maintain the permanent injunction decreed, not only by reason of its rights under the provisions of the Sherman Anti-Trust laws and the common law, but also because of the statutes of the State of Illinois and the decisions of the Illinois Supreme Court which established fully the petitioner's rights in the premises **and that the statutes and rule**

in Illinois should prevail. The statutes of Illinois applicable to the case and upon which the petitioner relies are Sections 46, Ch. 38 of the Criminal Code which reads as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * business or employment or property of another * * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000 or both."

and Sections 158, 159 and 160, Chapter 38, Criminal Code, reading as follows:

> "158: If any two or more persons shall combine for the purpose of depriving the owner or possessor of property of its lawful use and management, or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."
>
> "159: If any person shall, by threat, intimidation or unlawful interference, seek to prevent any other person from working or from obtaining work at any lawful business, on any terms that he may see fit, such person so offending shall be fined not exceeding $200."
>
> "160: Whoever enters a coal bank, mine, shaft, manufactory, building or premises of another, with the intent to commit an injury thereto, or by means of threat, intimidation or riotous or other unlawful doings, to cause any

person employed therein to leave his employment, shall be fined not exceeding $500. or confined in the county jail not exceeding six months, or both."

The decisions of the Supreme Court of Illinois relied upon are principally:

Doremus v. **Hennessey,** 176 Ill. 608.
O'Brien v. **People,** 216 Ill.
Purington v. **Hinchcliff,** 219 Ill. 159.
Franklin Union v. **People,** 220 Ill. 355.
Barnes v. **Typographical Union,** 232 Ill. 425.

These decisions were dealt with in our Brief and Argument on file. On page 32 there is a quotation stated to be from the case of **Doremus** v. **Hennessey,** *supra.* This is an error. The quotation should be in part from the case of **O'Brien** v. **People,** 216 Ill., p. 371, as follows:

"The law is well settled that every person shall be protected in the right to enter into contracts or in refusing to do so, as he shall deem best for the advancement of his own interests, without interference by others. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, and any attempt to compel an individual, firm or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees is not only unlawful and actionable, but is an interference with the exercise of the highest civil right. Thus we said in **Doremus** v. **Hennessey,** 176 Ill. 608, on page 614: 'The common law seeks to protect every person against the wrongful acts of others, whether committed alone or by combination, and an action may be had for injuries done which cause another loss in the enjoyment of any right or privilege of property. No persons, individually or by combina-

tion, have the right to directly or indirectly interfere or disturb another in his lawful business or occupation, or to threaten to do so, for the sake of compelling him to do some act which, in his judgment, his own interest does not require. * * * It is clear that it is unlawful and actionable for one man from unlawful motives to interfere with another's trade by fraud, misrepresentation, or by molesting his customers, or those who would be customers, or by preventing others from working for him or causing them to leave his employ by fraud or misrepresentation, or physical or moral intimidation, or persuasion, with an intent to inflict an injury which causes loss. * * * Every man has a right, under the law, as between himself and others, to full freedom in disposing of his own labor or capital according to his own will, and anyone who invades that right without lawful cause or justification commits a legal wrong, and, if followed by an injury caused in consequence thereof, the one whose right is thus invaded has a legal ground of action for such wrong."

Another part of the quotation erroneously stated to be from **Doremus** v. **Hennessey,** *supra,* appearing on page 33 of our brief is found in the case of **Purington** v. **Hinchcliff,** *supra,* and appears on pages 166 and 167 as follows:

"The question of unlawful conspiracy to injure the business of another, and the necessary elements to constitute it, has been before this court on other occasions. Our reports contain many well considered cases on the subject. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, and any loss wilfully caused by such interference will give the party injured a right of action for all damages sustained. All parties to a conspiracy to ruin the business of another because of his refusal to do some act

> against his will or judgment are liable for all overt acts illegally done pursuant to such conspiracy and for the subsequent loss, whether they were active participants or not."

Counsel for the respondents heretofore cited in opposition to our contention **Kemp v. Division No. 241 Assn.,** 255 Ill. 213, as follows:

A reading of the majority opinions in that case will demonstrate that the case did not nor was it intended to modify Barnes *v.* Typographical Union, *supra;* also that it does not bear upon the questions involved here. The purpose of the bill in that case as stated by the Court there, was as follows:

> "The only reasonable conclusion to be deduced from the allegations and prayer of the bill is that appellees by this proceeding seek to restrain the union and its officers from calling a strike of its members, the obvious purpose of the injunction sought being to prevent the union employees of the Railways Company from quitting their employment **in accordance with the vote previously taken, by which those employees as members of the union declared that they would cease to work with men** who, after receiving benefits through their organization refused to continue members. * * * The question presented for our determination, therefore, is whether a court of equity is authorized upon application by the non-union employees to restrain the union and its officers from calling a strike of the union employees **in accordance with the vote previously taken by the union employees as members of the union,** where the purpose of the proposed strike is to compel the employer to discharge non-union employees who are engaged in the same class of work." (Italics ours.)

The Court will note that the question of whether or not there should be a strike was submitted to and voted upon by the employees of the Railways Company, and that representations or action of the organization in dealing with the Railways Company **was upon the express authority conferred by the vote of the employees.**

The case at bar presents no such situation. The Tri-City Central Trades Council arrogated to itself the prerogative and privilege to demand from petitioner a change in wages, without authority or request of the employees.

The Court in **Kemp v. Division No. 241 Assn.,** *supra,* further says:

> "The purpose of organizing labor unions is to enable those employees who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union, and to accomplish their ends through concerted action. **If duly authorized by the employees to adjust any controversy arising between them and their employers, the union, its officers and committees, are merely acting as agents of the employees in the matter.** If the union employees have the legal right to inform their employers of their refusal to work with the appellees, they had the legal right to convey that information to the employer through an agent or agents, and the agent or agents who so act would not commit an actionable wrong thereby, nor by reporting back to the union employees the result of the conference with the employer." (Italics ours.)

No case is cited by respondent to sustain the conduct of respondents, without the request of the employees of petitioner and admittedly not representing them, through a self-appointed committee demanding from the petitioner a change

in the wages, which at the time as shown by the record were satisfactory to both the petitioner and its employees.

The undisputed evidence is that the Tri-City Central Trades Council and not the employees of petitioner declared a strike against the petitioner. That the employees made no complaint of their wages or working conditions. That the relations between the petitioner and its employees were in perfect amity and accord. That the Tri-City Trades Council demanded from petitioner a change in the scale of wages, and upon refusal to deal with its committee, declared a strike against the petitioner. There is no evidence in the record to justify the argument or contention that any employees of the petitioner made complaint to either the Tri-City Trades Council or to any union affiliated therewith. The evidence, so far as the record discloses, is to the contrary.

The employees of the petitioner did not strike nor cause any strike. A circular appearing on page 30 of the record states who called the strike; it reads as follows:

> "UNION MEN AND ALL LABOR STAY AWAY FROM THE AMERICAN STEEL FOUNDRY, GRANITE CITY, ILL.; ALL TRADES ARE ON STRIKE
>
> For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.
>
> By Order of Ways and Means
> COMMITTEE OF TRI-CITY CENTRAL TRADES COUNCIL,
> Endorsed by Tri-City Trades Council."

Even the two men who quit the employ of petitioner as a result of the strike called by the Tri-City Trades Council had no relation to or connection with the strike, and as disclosed by the record, knew nothing of it until after the strike had been launched. Each testified that they quit work because a strike was on.

In that connection note the facts in Kemp *v.* Division No. 21 Assn., *supra*, cited by respondents:

> "The threat made by the committee that the members of the union would call a strike of the employees of the Railways Company unless their demands were complied with, meant no more than that the union employees would be notified to quit work in a body at a definite time if the non-union employees were retained in the service. **This section of the committee, if not then authorized, was ratified by an almost unanimous vote of the union employees. The union employees thereby authorized and instructed the union, its officers and members, to call the strike which it is sought by this proceeding to prevent. The contemplated action of the union employees is not the result of the dictation of any officer or officers of the union or of any person not interested in the employment, but is the voluntary action of the union employees of the Railway Company.**" (Emphasis ours.)

In the case at bar the very reverse state of affairs existed. The employees did not authorize the Tri-City Trades Council or its self-appointed committee to act for them, and did not ratify their action, but on the contrary were ignorant of the Trades Council's activities, and with the exception of two men, Churchill and Cook, refused to leave the employ of the petitioner, and in consequence were subjected to indignities, intimidation, terrorism and assault.

The decision in **Kemp v. Division, etc.,** *supra,* in no way modified the ruling as theretofore expressed in that Court and on its facts is entirely inapplicable to the instant case.

VI.

Can the Clayton Act nullify the statutes of Illinois and vitiate the decisions of the Illinois Supreme Court with reference to the petitioner's rights for the protection of its property and its property rights as established by the statutes of Illinois and by the decisions of the Supreme Court?

We said at page 42 of our Brief and Argument heretofore filed:

> "On the bill of complaint in the case at bar an injunction was granted to protect the petitioner in its property and its right of property, amongst which is the contractual relationship between itself and its employees; its right to the lawful pursuit of its business and property, free from annoyance, interference and destruction, as was its rights under Sections 46 and 158 of Chapter 38 of the Criminal Code of the State of Illinois and under the decisions of the Illinois Supreme Court."

Counsel for the respondents insisted that petitioner having sought its relief in the Federal Court the case must be decided by the Federal Court without regard to the statutes and decisions of Illinois. This we contested in our brief and argument already filed herein and we still contest. We cited and again cite in support of our position, the case of **Burgess v. Seligman,** 107 U. S., 20. This Court said in that case at p. 33 as follows:

"Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the state, and have all the effect of law, and which it would be wrong to disturb. **This is especially true with regard to the law of real estate, and the construction of state constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is.** But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, **or when there has been no decision of the state tribunals,** the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State Courts."

The rule there announced still holds. It has never been even modified in any subsequent decisions.

The Supreme Court of Illinois has in an unbroken line of decisions given interpretation and construction to the statutes of the State of Illinois upon which petitioner relies, and had also established a rule for that state with reference to the right of protection by injunction of property and property rights against acts and conduct and proceedings as exist in the case at bar and constituting under these decisions an unlawful attack upon and invasion of petitioner's property and rights of property. Congress had not spoken on this subject until after petitioner secured its final judgment and decree. The act of Congress under which respondents claim relief, namely the Clayton Act, did not become law until October 15, 1914, (and which we believe we have satisfactorily shown in no way is applicable to or can affect this case). The final judgment and decree of the petitioner in this case was entered June 9, 1914. The statutes under which the petitioner claims protection were enacted and became law in the years 1863 and 1887 respectively. The decisions of the Illinois Supreme Court under which petitioner claims its right to maintain the permanent injunction granted by the District Court were made as early as 1898.

The Federal courts have not prior to the filing of the bill of complaint herein made any ruling or decision on the subject matter of the controversy presented herein nor as we contend since made any decision contrary to the rule in Illinois upon a similar state of facts, and under the case of **Burgess v. Seligman,** *supra,* the statutes of Illinois under which the petitioner claims and as construed and interpreted by the Illinois Supreme Court and the decisions of the Illinois Supreme

Court upon which petitioner relies should prevail in determining its rights herein.

The ruling announced in **Burgess v. Seligman,** *supra,* has been followed in **Butcher v. Cheshire R. Co.,** 125 U. S. 555; **Gormley v. Clark,** 134 U. S. 338.

VII.

We do not submit this supplemental brief in substitution of the brief and argument heretofore filed but merely supplemental thereto, and especially with the view to meet any claim or contention that the Clayton Act can or should in any way affect the right of the petitioner to retain the permanent injunction granted to it and in the manner and form decreed by the District Court.

This proceeding was not to restrain the organization of a union. It is not to restrain any employee from abandoning his employment. Neither the right of any laboror or any number of laborers to quit work was challenged nor the right of any employee of the petitioner to strike and abandon his work is denied. The scope and purpose of the bill filed herein was to restrain an unlawful combination and conspiracy of and amongst the respondents, none of whom were employees of the petitioner, nor representatives of the petitioner's employees, nor authorized to speak or act for them either in advance or by subsequent ratification, from interfering with the petitioner in the operation of its plant or with the employees and their right to work for the petitioner and discharge their contract obligations to it. The bill here was leveled against an unlawful and arbitrary "strike" on petitioner's plant by The Tri-

City Central Trades Council, a stranger to the petitioner and to its employees, to enjoin its lawless, wanton and brutal attacks and its assaults upon the plant, its assaults upon petitioner's employees and its interference with petitioner's business, and the injury to and threatened destruction of petitioner's property; its attempt to force petitioner's employees to violate their contract of employment by abandoning their places and depriving petitioner of its lawful right to use its property and pursue its business in due course. Respondents undertook by "strike" and by violence and by other forms of lawlessness to close down the plant of petitioner unless its demand, the demand of a stranger having no right to strike and interfere, was complied with.

The facts in this case disclose a horrible condition of lawlessness. The resorting of respondents to violence, to assault, to intimidation and unrestrained brutality is proved peradventure. If the violence and lawlessness thus exerted were not sufficient to bring petitioner to its knees and comply with the unwarranted and gratuitous demands of respondents, they would, if need be, carry out their wicked conspiracy, resort to the torch and burn down petitioner's plant.

Respondents claim the right to do picketing and persuasion of a peaceful character. But did the respondents regard their assaults and their violence and their brutality and their use of the bludgeon as forms of peaceful picketing and peaceful persuasion? Will this court assume the respondents caught red-handed in their lawless, violent and criminal expression of peaceful picketing and peaceful persuasion would change their method in that regard if the injunction is modified?

We respectfully submit that under the facts as disclosed in the record the injunction as granted by the District Court should be sustained and no modification thereof should be allowed which can only result in renewed acts of lawlessness and violence.

Can the outrages of the respondents be resumed under the authority of the Clayton Act? Can the Clayton Act be availed of to condone the unlawful interference with petitioner's property and property rights? Can the Clayton Act be used to continue the unlawful conduct and lawless practices of the respondents? We believe this Court will hold it cannot.

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
Solr's for Petitioner.

MAX PAM,
Of Counsel.

The supplemental brief on behalf of the respondents was only received after this brief was in the hands of the printer. It was therefore impossible to prepare and print a reply thereto in time for filing before the case is reached on call for oral argument.

In the very limited time permitted for examination of respondent's supplementary brief, we note that references to the record in quoting evidence are in each instance incorrect. Evidently counsel had before him a copy of the abstract of record filed in the Circuit Court of Appeals and not the record filed in this Court. It will be necessary to reserve to the oral argument reference to these quotations from the evidence.

An examination of all the authorities referred to and quoted from in respondents' supplementary brief is at the moment impossible. We have, however, examined a few of the cases cited and are safe in saying that none of those examined by us is in contradiction of the principles or propositions of law, contended for by us or in neutralization of the authorities presented by us in support thereof. Under the circumstances we would need also to reserve further observation as to the authorities cited by counsel in his supplementary brief, to the oral argument.

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REFERENCE TO ERRORS AND OMISSIONS IN THE QUOTATIONS FROM THE EVIDENCE APPEARING IN THE SUPPLEMENTARY BRIEF OF COUNSEL FOR RESPONDENTS.

At pages 18 and 19, counsel quotes from the testimony of Galloway, President of the Tri-City Central Trades Council. It is at pages 54 and 55 of the record instead of pages 43 and 44 that the testimony appears.

Without the use of asterisks he omitted the following in the paragraph from which he quoted after: "As Chairman I went in to see Mr. Walcher and stated the case to him",
the following:

> "He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions; he stated that he would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievances to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back."

He also omitted from the same paragraph the following after: "It was reported back to the joint board and a strike was declared on the plant",
the following:

> "Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts I believe."

Counsel further quotes from the testimony of Galloway which appears at page 57 of the record instead of page 45, but omits the following in the same paragraph:

> "On the seven or eight occasions I was down there **I went down to see how things were going and went down to see that things were going right.** These pickets were stationed adjacent to Neidringhaus Avenue around the depot. That is one of the main streets leading from the plant.
>
> "I am a plumber and were never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there. We circulated some bills (witness handed Exhibit "B") that is a representation of the seal of the Tri-City Central Trades Council. This is one of the bills that was circulated that I referred to."

Counsel quotes from the testimony of Cavanaugh, Secretary of the Tri-City Central Trades Council, page 19 of his brief, appearing at page 72 of the record instead of page 57. He omits the following referring to the Council: "They called a strike in this case".

Following immediately after the sentence: "We had complaints from the men themselves working at the foundry" appearing on the same pages he also omits the following from the same paragraph:

> "I couldn't state their names. I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

On page 20 of the brief Counsel quotes from the testimony of Walcher stated to be page 41, but being in the record at page 51. He quotes from a paragraph the following:

> "We ran the plant without any trouble with our men up until the morning of the 23rd of April."

He then omits the following from the same paragraph without the use of asterisks:

> "From the 24th of April on until the issuance of the restraining order the defendants were almost unbearable toward our employees; it reached the point where they were in fear of entering and leaving the works."

He also omits the following from the same paragraph without the use of asterisks:

> "Since the restraining order was issued every thing has been very peaceable and quiet and haven't had any trouble our men entering and leaving the work; it would have been impossible for us to continue to operate the plant had this restraining order not been issued."

He also omits immediately following the paragraphs quoted the following testimony of Mr. Walcher:

> "Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from anyone in our employ."

Counsel also quotes from the testimony of Holmes witness for respondents which appears at page 68 of the record instead of 53, as follows:

> "I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

Immediately following this he omits the following sentence in the same paragraph:

> "I don't know what the reduction was I didn't go back to find out."

He also omits the following from the testimony of the same witness on cross-examination on page 69 of the record:

> "I made application for work when the plant opened in April. I didn't get the work."

Counsel quotes from the cross-examination of Fortner, witness for petitioner appearing at page 53 of the record instead of page 42. He used the expression "and was not molested" in his brief while the record shows the expression used by the witness was "nobody assaulted me" and counsel omits what immediately followed in the same paragraph:

> "It was either Ishman, Lamb or Holmes that told me there was a strike on and I had better not work there. I quit on the 25th. After that time I got reports to the effect that they said if I started working again they would knock my head off. That came from an outsider."

Why should counsel substitute "was not molested" for "nobody assaulted me"? The inquiry answers itself.

Counsel also, on pages 31 and 32 of his brief, quotes from the testimony of various witnesses for the petitioner to neutralize the evidence on the subject of violence and the use of force. The record is so full of indisputable evidence and proof of violence, assaults, and thuggery that it is unnecessary to comment on conusel's quotations in that regard. We are only surprised he should for one moment think that his garbled quotations from the testimony of the witnesses would escape refutation by the record itself.

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JAMES D. MAHER,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 142, 243, 132

AMERICAN STEEL FOUNDRIES, PETITIONER,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL ET AL.,
RESPONDENTS.

REPLY FOR PETITIONER.

Respondent's "Statement, Brief, and Argument" was not brought to the attention of petitioner or its counsel until the case was on, the day called for argument. It will be impossible, in the limited time, to respond to the various points made by respondents or to examine and comment upon the various authorities cited or herein discuss the propositions of law submitted. A hasty reading of respondent's argument, however, compels calling attention to the many repeated variances, inaccuracies, and misquotations of the evidence in the case, and petitioner will in the main address itself in reply to a correction of the more important "errors" and "variances" in that regard.

I.

Heretofore it was not claimed by respondents that the Tri-City Central Trades Council (hereinafter referred to as Trades Council) or any other of the respondents represented or claimed authority to act for the employees of petitioner in making its demands upon petitioner or in calling the "strike." Since attention was called in the petition for rehearing filed in the Circuit Court of Appeals and in the petition for writ of certiorari herein, respondents have sought to spell out of the record evidence in that respect. The petitioner in its brief called attention to the testimony of every witness in the case on that subject, and demonstrated that the record was bare of evidence to justify the statement of the Circuit Court of Appeals that "many of the plaintiff's employees at the time of the strike were members of the defendant's organization, or Tri-City Central Trades Council."

Counsel for respondents, appreciating the importance of this fact, states evidence in the form of quotation quite unsustained and unjustified by the record. He states, page 27 of his brief, "Complaint has been made in the case at bar that such Council had no authority to protest against the reduction of the scale, even though the superintendent himself testified that 'probably 80 or 90 per cent of those employed on the day the strike was ordered were members of various locals affiliated with such Trades Council' (AR. 41)." Walcher was the petitioner's superintendent. The only testimony given by him on this subject appears under cross-examination at page 41, as follows: "When we closed in November all our employees were discharged; they were laid off indefinitely on account of closing down the plant. When we opened, April 6, we employed whoever we saw fit; whoever *employed* for employment at the gate. Started the plant the same as a new plant. We only had called for, in round numbers, 300 men, and laid off approximately 300 men. **80 or 90 per cent of the employees were old men.**

I assume these men were members of various organizations; I can't state definitely as to that." The court will not find in the testimony of Mr. Walcher, as it appears on page 41 of the record, "probably," or "of those employed," or "on the day the strike was ordered," or "locals affiliated with such Trades Council," and all contained in respondents' quotation of this evidence. Did counsel believe that this misquotation would escape attention?

Counsel states, on page 38, "In the case at bar the Tri-City Central Trades Council represented the employees other than the strike-breakers. Walcher, the superintendent, testified that probably 80 or 90 per cent were members of locals affiliated with the Tri-City Central Trades Council (AB. 41)." As before stated, this statement utterly and affirmatively differs from the evidence as it appears on page 41 of the record. Counsel further states, on page 38, "According to the testimony of the president and secretary of the Central Trades Council, such organization acted for and on behalf of employees in such mill. Galloway testified, 'After the Council received complaints about reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting, and they brought their complaint jointly before the central body and asked for its co-operation' (AB. 41)". His testimony agrees with that of Superintendent Walcher, who said: "Eighty or 90 per cent of the 350 men employed when the strike took place were members of different locals affiliated with the Central Trades Council (AB. 41)." In the same connection counsel for respondent says:

> "Cavanaugh, the secretary, testified that, at a meeting held on April 15, a communication was received requesting that a special meeting be called of all trades working at the American Steel Foundries, to arrange some plan to have the wages reinstated, and a meeting was called for the 19th. At such meeting 10 or 12 trades were represented."

He does not state from whom the communication was received, leaving it to be inferred that the communication might have been from the employees of the petitioner. The witness stated, at page 57, that the communication was received from the Machinists' Union—not from the employees of the petitioner. The testimony of Superintendent Walcher is again misquoted, and through the form of misstatement it is attempted to give character to the testimony of Galloway, the president, and Cavanaugh, the secretary, not justified by the record.

So far as the record shows there was but one employee of the petitioner a member of any machinist's union, and that one went out in response to the "strike" call of the Trades Council, i. e., Thomas Churchill, who testified, page 53, "At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I was not completely satisfied. It was the best thing I had to take at the time being and I have not had anything better since. I did not get a better job. **I quit because these fellows asked me to go out.**" It is evident from this testimony that no machinist made any complaint or requested a meeting to be called of the trades working at the American Steel Foundries.

On page 56 counsel says, "Complaint has been made in the case at bar, that such Council had no authority to protest against the reduction of the scale—even though the superintendent himself testified that probably 80 or 90 per cent of those employed on the day the strike was ordered were members of various locals affiliated with such Trades Council (AB. 41)." On page 59, however, dealing with the same statement of the superintendent, counsel quotes Mr. Welcher as follows: "We had approximately 300 men—80 or 90 per cent of those were old men; I assume these were members of the various labor organizations" (AB. 41B). Even in this partially correct quotation counsel adds the article "the" before "various labor organizations" and inserts the word "labor" before the word "organizations." Both "the" and

"labor" were put in, though not in the testimony as shown on page 41. It must have been intended to give some form of identification or application to the "labor" organizations forming the Trades Council, which the witness did not do and did not intend to do; and counsel in the same quotation omits deliberately the further statement of the witness, "I can't state definitely as to that."

On page 67 counsel says, "In the case at bar, 'after a request from those employed in the mill for co-operation, the Executive Board selected the pickets' (AB. 44-57)." We have several times and with great care examined the record from page 44 to 57 inclusive, as well as indeed the whole record, and find nowhere any such evidence as is here quoted. What the record shows on the subject of selecting pickets appears on page 45 of the record in the cross-examination of Galloway, as follows: "A committee of the joint board of the Tri-City Central Trades Council selected these pickets; rather they were from the different crafts that were connected with the reduction in wages. The joint board placed pickets down there at the Wabash Depot along the streets leading to the plant of the American Steel Foundries and we sanctioned their action." There is nothing here of any "request from those employed in the mill for co-operation." On page 44 of the record the same witness testified "After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the central body and asked for its co-operation in the matter of arbitration with the foundries." There is nothing there of any "request from those employed in the mill for co-operation." Indeed, the court will look in vain through the entire record for any such testimony or evidence.

On page 71 counsel says "Lamb testified; 'Five machinists quit work' (AB. 48)." Walcher, superintendent, testifies, record, page 41, "**Only two men left our employ in response**

to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from anyone in our employ." The two men who quit were Cook and Thomas Churchill, the only machinist who went out in response to the strike call. The evidence on page 48, from which counsel quotes, is as follows: "On the 22nd or 23rd of April, I think five of our machinists were in the plant, one by the name of Mussell, who quit of his own volition, and Tom Churchill and Hampy and Drogg; Drogg was what we called a semi-machinist." At the top of the same page under direct examination Lamb testified: "Prior to the strike some of the men in my organization were employed at the plant, we called them out after the strike had been declared. This clearly shows that the machinists working at the mill did not strike. Indeed, they were called out **after the strike had been declared,** and as contended by petitioner, were satisfied and contented and indeed, so far as the record discloses, these machinists did not respond to the strike call but remained in the employ of the petitioner, for as testified to by Walcher, the superintendent, "only two men left when the strike was called:" One was Isaac Cook and the other was the machinist Churchill.

Counsel says on the same page, 75, "Churchill testified he quit because he was a member of 'the machinists' union' (AB. 52)." Churchill did not testify to any such thing. We find the evidence of Churchill on page 52 of the record, and with reference to why he quit he says "**I quit because these fellows asked me to go out.**" Who were "these fellows?" Not the Machinists' Union. They were the Trades Council. The Machinists' Union did not call the strike. The Trades Council called the strike. That is admitted, and the handbill appearing on page 24 of the record shows the strike was called by the committee of the Trades Council.

On page 104 counsel states "Cook testified that he quit

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because of the reduction of wages." On direct examination his testimony was, "I quit because they cut my wages." On cross-examination Cook says: "I did not quit as soon as I got my pay but worked four or five days longer and **I quit because they said there was a strike on.** I just felt as it was right for me to come out." Why counsel in this manner misstated the testimony of Cook must be apparent.

On page 107 counsel, again stating the testimony of Walcher, the superintendent, makes this amazing misquotation: "Eighty or 90 per cent of the 1,600 men were members of the various locals affiliated with the Central Trades Council when the plant closed down," and proceeds to state "Then a like per cent of the 350 employed when it opened up were likewise members of the various locals represented by the said Central Trades Council" (AB. 41). And he further says: "According to the testimony of the president and secretary of the said Council those employees affected by the reduction made the complaint, and asked the co-operation of such Council (AB. 44-57)." The testimony of Walcher on this point the Court will find at page 41 of the record.

We have carefully followed counsel for respondents in his presentation of the evidence (?) and feel safe in saying that even the erroneous and insupportable misquotations do not sustain the contention that employees of the petitioner at any time were members of or were represented by the Trades Council in calling the strike at the petitioner's plant and in seeking to coerce the petitioner into a change of wages and conditions then satisfactory to the employees.

II.

It is rather interesting to note counsel's vehement assertion of the peacefulness and virtue of the Trades Council and its officers. His defense of the lawfulness of this "model" organization and denunciation of the lawlessness of

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the I. W. W. organization, in the light of the evidence, are at least amusing. At first there is a substantial denial of any violence or even disturbance except perhaps by some poor unnamed immigrants who, escaping from the oppression of their homeland, are excused for any violence towards the employees of petitioner by the fact that they could not indulge in the "sport" of slugging in their former country. Later we find considerable discussion in which the testimony of the various witnesses as to the violence and assaults is dealt with from the viewpoint of contention that the efforts in that direction were the wrongs of the individuals and not of the Trades Council; and it is attempted to exculpate the Trades Council and its officers by the statement, page 57, "The Central Trades did not instruct anybody to assault these parties, these strike-breakers or anybody. These pickets were not authorized to commit an unlawful act. That was not the intention of the Central Trades Council. That is not the way the Council carries on its business."

What becomes of the testimony and counsel's quotation of the testimony, appearing on the same page 57, "A committee of the joint board of the Tri-City Central Trades Council selected the pickets?" Who did the slugging? Strangers? Who pursued the employees of the petitioner? Were they strangers or were they pickets? The respondents in testifying admitted that they were the pickets of the Trades Council. These same respondents it was shown by the evidence committed the assaults.

And what about Galloway, the president, concerning whom Wm. Francis testified, page 33 of the record, That fellow there (pointing to Galloway) threw a brick and hit his man in the ear." "I have known Galloway five or six months. I am sure Galloway was there. I am sure I saw him. I saw Galloway throw a brick. He threw it at that fellow there, sir;" and who (Galloway) testified, page 45 of the record, "On the seven or eight occasions I was down

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there I went down to see how things were going and went down **to see that things were going right.** These pickets were stationed adjacent to Neidringhaus Avenue around the depot. That is one of the main streets leading from the plant."

And how about Mr. Lamb of the Union National Association of Machinists of St. Louis, who had a local at Granite City affiliated with the Trades Council, concerning whom Oscar E. Hall testified, page 39, as follows: "About the 24th or 25th of April I had a conversation with the defendant Lamb, who said to me, '**We did not like the way you have treated our boys down here and we just come down to raise a little hell.**' Just before he said this he was with a party of five or six men."

What about the undisputed fact that before the Trades Council called a strike at petitioner's plant all was quiet, peaceful, and contented, no disturbance and no complaint. That immediately after the strike was called and the men selected by the Trades Council as pickets proceeded to operate in that capacity, intimidation, assault, brutality, slugging, and riot ensued; and then immediately upon the service of the restraining order issued by the District Court all was again peaceful and quiet and undisurbed.

Who caused the violence? Who caused the assaults? Who practiced the terrorism and brutality? Who threw the bricks and used the bludgeon? The Trades Council and the pickets selected by it to carry out its infamous and illegal conspiracy to force petitioner to change the wages of its employees when the employees themselves asked no change and were entirely satisfied; to assault, intimidate, and slug the employees of the petitioner unless they struck and left the employ of the petitioner and violated their contracts of employment; and to shut down the plant and disrupt the business of the petitioner in order to carry out its illegal conspiracy.

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III.

As counsel for respondent proceeds with his argument and presentation he gets bolder and bolder, until we find him saying, page 79, "We will admit that when certain trades affected by a reduction of wages reported the matter to Tri-City Central Trades Council and requested action that such Council did take action, first, by appointment of a committee to arbitrate the wage question, and when the representative of the company refused the proposition there was nothing left for the Tri-City Trades Council to do but issue the strike order." The arrogance of this organization is expressed in its lawless conduct. It does not matter, apparently, that the employees of the petitioner were satisfied; that they were contented; that they asked no change in wages and no change in conditions; that they were living in amity, in concord, and in happiness with their employer, the petitioner.

If, forsooth, some barber wanted to get five cents more for a shave from the employee of the petitioner, or some baker wanted to charge such employee more for his bread, or some bartender or saloon keeper sought to get a larger price for his beer or whiskey, or some carpenter, painter, plumber, plasterer, lather, moulder, electrician, or clerk in some store or any other of the "trades" affiliated with the Trades Council desired to charge employees a higher price for the things the employee used and desired, in order to secure such enhancement in price the Trades Council could be requested to force the employer to pay the employees higher wages so that these various trades could exact higher prices, and if the employer refused the request of a committee from the Trades Council, then, as we understand counsel, the Trades Council had the right to demand an increase in wages or an arbitration and if the employer, having no request or complaint from the employees, declined to treat with such a committee, the Tri-City Central Trades

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Council had the right to "strike" the employer's plant, intimidate and assault the employees, and if necessary shut down the plant; and this is claimed by counsel as a legitimate pursuit of this organization and is a lawful undertaking which may not be enjoined, as was decreed by the District Court.

Counsel goes further and says, page 97, "But the 37 labor unions connected with the Tri-City Central Trades Council, are composed of a law-abiding citizenship, and have no use for either the I. W. W.'s or Emma Goldmans. **They do insist, however, that they have the right to band together and as an organization make any resonable demand upon the employer. And the right to enforce such demand by peaceful picketing and other lawful means.**" As applied to the evidence and the facts in this record this insistence and assertion of counsel for respondents makes one gasp.

Our astonishment at the boldness of respondent is only equaled or exceeded by the scandalous statements appearing on pages 76 and 77 and 94 and 95 of the brief and argument for respondents. The subject-matter there contained is offensive and is indefensible and should be stricken out as scandalous.

Respectfully submitted,

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

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JAMES D. MAHER

No. 9[illegible]

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IN THE

SUPREME COURT OF THE UNITED STATES

.....TERM, A. D. 1917.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, ET AL.,
Respondents,

BRIEF OF RESPONDENT ON PETITION FOR WRIT OF CERTIORARI.

FRANK C. SMITH,
Attorney for Respondents.

Press-Record Publishing Co.

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IN THE

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vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, ET AL.,
Respondents,

RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE SUPREME COURT:

We do not believe this to be a case for review by the Supreme Court. As has been said "The Supreme Court may extend Certiorari to every case pending in the U. S. Circuit Court of Appeals * * * but this power will be sparingly exercised and is only properly invoked where questions of gravity and importance are involved."

In re Woods, Petitioner, 143 U. S. 202.
Lau Ow Bew vs. U. S., 144 U. S. 47 - 55.
Forsyth vs. Hammond, 166 U. S. 506 - 14.
Lau Ow Bew, Petitioner, 141 U. S. 583.
The New York, 175 U. S. 187.

STATEMENT.

The statement of Petitioner as it appears on page 8 is, **in part,** a correct statement of the facts. According to the evidence, Cook, one of the employees did not know there had been a reduction of wages at the plant until he received his first pay (Ab. 70). Churchill quit when the strike was called (Ab. 66). It was not to remonstrate with the American Steel Foundries people that Earl Galloway, the President of the Tri-City Central Trades Council, called at the Mill about the 20th day of April, 1914.

The men in the employ of the Mill, who were members of Unions having representation in the Tri-City Central Trades Council, had filed complaint with the Central Trades Council, because their wages had been reduced, and at their request a Committee was appointed to confer with the Managament (Ab. 54). Galloway, by virtue of being President, was made Chairman of the Committee and he was the only one the Company would admit to the Plant (Ab. 55). The Superintendent found fault because none of the Committee were employees that particular day. But Galloway informed him that some of the Committee had been and were members of the different locals (Ab. 55).

Mr. Walcher, the Superintendent, informed Galloway that he would not meet with any representative of organized labor (Ab. 55); that if anybody around that plant had a grievance to come as individuals (Ab. 55). Just how many employees were members of Unions represented in the Trades Council we do not know, but Walcher, the Superintendent, testified that probably 80 or 90 per cent (Ab. 51). "We positively did not propose to recognize any of these Labor Unions. I told him, Galloway, we had nothing to arbitrate (Ab. 52). We run an open shop; don't recognize organized labor, merely deal with our employees (Ab. 32). I refused to deal with Galloway because he was representing a labor organization" (Ab. 32). Just how many employees were out owing to the reduction of wages we can only approximate. The Superintendent testified that when running full force there were about 1600 men, but at the time of the strike, probably about 300 (Ab. 26). When the Granite City Commercial Club endeavored to bring about a settlement and a Committee from the Central Trades met with representatives of such Club, the City officials and representatives of said Mill (Ab. 55), Walcher, the Superintendent, said: "We have no arbitration offer to make to these laboring men" (Ab. 52). After Galloway reported the result of such interview to the Tri-City Central Trades Council a strike was ordered and while assaults may have been committed, as to whether such assaults were committed " by strikers" or "strike breakers" or "outside parties" there is a conflict in the evidence.

The reason Mayor Kirkpatrick, of Granite City, did not furnish police is because he did not think it necessary (Ab. 59)

and for like reason no deputy sheriffs were furnished by Sheriff Henry (Ab. 61). At the joint conference held at the instance of the Commercial Club, Galloway said to Davis, the President of the Mill Company: "One of your men tried to shoot one of our boys last night" (Ab. 56), and Mr. Davis replied: "The only trouble with that fellow was his aim was not good enough" (Ab. 56). The Mayor overheard this (Ab. 58). Hence, it may be possible that the Mill people were seeking to bring on a conflict between their strike-breakers and the pickets to give them an excuse to go into Court and ask for an injunction. No one connected with the Trades Council, nor did any of the defendants threaten the destruction of property. Walcher, the Superintendent, testified that he heard it, but as to who said it, or from whom he heard it, he had no recollection (Ab. 30). No other person made such charge.

That part of the statement which says that the Tri-City Central Trades Council was "a meddler" (P. 12) is erroneous.

Galloway, the President of the Tri-City Central Trades Council testified: "After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation" (Ab. 55).

Cavanagh, the Secretary of such Trades Council testified: "A communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to

have the wages restored. * * * Ten or eleven trades were represented at the meeting on the 19th. I was not at the meeting on the 20th when the committee reported" (Ab. 72).

Just how many employees of the Foundries were members of Locals represented in such Central Trades Council is not stated unless we take the testimony of Walcher, Superintendent of the plant, who said he thought about 80 or 90 per cent (Ab. 51). The ruling of the U. S. Circuit Court of Appeals in reversing the cause and directing the Court below to modify the decree, says: "In so far as the decree restrains all picketing and all persuasion and all interference with the Plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein" (Ab. 114).

The Complaint of the defendants in this case is based on the ground that the District Judge held it to be unlawful for wage earners to combine **without regard to lawless acts.** The learned Judge said: "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this Complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful" (Ab. 78). The defendants took exception to such holding and appealed. The District Judge held furthermore that "There is no such thing as peaceable picketing" (Ab. 80). To this holding also the defendants dissented. Upon both propositions the defendants were sustained by the U. S. Circuit Court of Appeals. Nor was the ruling of such Court of Appeals by a divided Court.

BRIEF AND ARGUMENT.

We shall take up the points in the order, as they appear, in Petitioner's Brief on Pages 5, 6 and 7.

I.

The contention of petitioner to the effect, "that upon the undisputed evidence in the record * * * the Circuit Court of Appeals erroneously reversed the decree of the District Court." is without merit, for the reason. The District Judge predicated his opinion upon what constituted "an **unlawful combination.**" "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purpose of that combination is to prevent this Complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful" (Ab. 78). As far as the combination itself is concerned there was no dispute, but the Tri-City Central Trades Council, and other defendants, contend that such a combination was not unlawful. The trial Judge in his opinion, on page 80, said: "There is no such thing as peaceful picketing." The contention of the Tri-City Central Trades Council is that there is such a thing as "peaceful picketing" and the evidence on this point is conclusive. On

page 81 the District Judge said: "The injunction may go this much further, it may prohibit absolutely picketing for the purpose of executing this unlawful purpose."

It was upon these two questions, as to what constitutes an **unlawful combination,** and the right to do **peaceable picketing,** that Complainant and the Defendant disagreed and the issue upon these two questions was squarely joined.

When the plant resumed operations they reduced the scale of wages from two to nine cents per hour. Because of this fact a controversy arose between employer and employees. The Tri-City Central Trades Council, while composed of representatives of 37 Labor Unions of Granite City, Madison and Venice, maintained it was not an unlawful combination. According to the testimony of **Galloway,** the President, its object was "to better the conditions of the working classes" (Ab. 54). "To settle all disputes between employer and employees in relation to wages, etc., by arbitration instead of strike. * * * We tried to carry out that section (Ab. 54). The Central Trades Council is not a secret organization. Its meetings are open, its minutes are printed and promulgated and sent to all affiliated bodies" (Ab. 55).

Cavanagh, the Secretary, testified that "The object of the Council is to bring the laboring class into closer affiliation and secure better working conditions and wages for the workingmen" (Ab. 72).

The major portion of the employes of the American Steel Foundries were members of the various Locals which comprise

the Central Trades Council. Just what number it does not appear, but Walcher, the Superintendent of the Mill, testified: "We only had called for in round numbers, three hundred men and laid off approximately thirteen hundred. Eighty or ninety percent of the employees were old men. I assume these men were members of the various organizations" (Ab. 51). Galloway, the President, testified: "After the Council received complaints about the reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation" (Ab. 55).

Cavanagh, the Secretary, testified that "At a regular meeting on April 15th of the Tri-City Central Trades Council, a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages restored. The meeting was called for Sunday, the 19th, and ten or eleven trades were represented (Ab. 72). We had complaints from the men who worked at the Foundry (Ab. 72). Our organization is not secret. Our meetings are not secret" (Ab. 72).

Why the District Judge should hold such a combination to be unlawful is beyond our comprehension.

"Conspiracy" has been defined to be a combination between two or more persons to do a criminal or an unlawful act,

or a lawful act, by criminal or unlawful means," Cyc. Vol. 8, P. 620.

In the case at bar Complainant failed to prove a "conspiracy." Nevertheless the District Judge held it to be a "conspiracy" for workingmen to combine and demand the restoration of a former scale of wages (Ab. 78).

While the District Judge did hold that it was unlawful for wage earners to combine to compel the employer to pay a certain scale of wages, the U. S. Circuit Court of Appeals, on appeal, said: "From the record here we can reach no other concluson than that the object of this strike was to secure for Plaintiff's employees the November wage scale of the Union. Nothing appears in the record to indicate that this was not in good faith" (Ab. 112). The Court held furthermore, "In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed" (Ab. 112).

II.

As to the charge of conspiracy or unlawful combination there was not one scintilla of evidence. Quite true it was alleged in the bill but there was no proof. When Galloway, the President of the Tri-City Central Trades Council, testified, Counsel for Petitioner on Cross Examination sought to have him admit as much, but all he said was, "Our purpose in sending the pickets down there was not exactly to enforce an increase of wages but to try to encourage working men to quit work so the American Steel Foundries would be compelled to raise the wages to the standard" Ab. 57). "The pickets were not authorized to commit any unlawful acts, that is not the way the Council carries on its business" (Ab. 57).

Cavanagh, Secretary of the Central Trades Council, testified: "The object of the Central Trades council is to bring the laboring classes into closer affiliation and secure better working conditions and wages for the workingmen. No one connected with the Council authorized any unlawful act" (Ab. 72). **Wade,** Treasurer of the Central Body, testified: "We didn't authorize any unlawful or wrongful act" (Ab. 73).

The U. S. Circuit Court of Appeals, Fourth Circuit, in a recent case said:

"A combination to organize employees in a certain business to secure higher wages by peaceable and lawful methods does not constitute a conspiracy."

Mitchell v. Hitchman Coal & Coke Co. 214 Fed. 685.
(Decided 1914.)
(Opinion District Judge, 202 Fed. 512, reversed.)

Nor was the "threats of an organizer to organize the employees of Complainant's mine or shut it down, sufficient to show a conspiracy."
214 Fed. 685.

Notwithstanding the District Court held otherwise, "Evidence on review held insufficient to establish a conspiracy on the part of the officers and representatives of Labor Unions to organize the employees of Complainant's mine by unlawful means" (Id).

In a very recent case it was held, "Laborers may combine, forming unions to protect their rights and they have a right to persuade Complainant's employees to leave its service * * * they may picket their employer's business."

Alaska S. S. Co. v. International Long Shoremen's Assn. of Puget Sound. 230 Fed 964. (Decided 1916.)

On page 969 appears an opinion which was written by Justice Holmes while sitting on the Supreme Bench of Mass. (167 Mass. 92).

"If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible returns, it must be true, when combined, they have the same liberty that combined capital has to * * * bestowal or refusal of these advantages which they otherwise lawfully control" (P. 969).

On Volume 8 of Cye. on page 637 we find the following:

"In the earlier decisions, it was held that while persons may each singly refuse to work unless they receive an advance in wages, yet if they do so by preconcert, or association, they may be punished as for a conspiracy * * *.

The more recent English decisions, influenced doubtless by legislation on the subject, hold that workmen have a right while perfectly free of enjoyment to agree among themselves not to go in to any employment unless they can get a certain rate of wages. * * *

The doctrine of these later decisions is also recognized in America. Workmen may lawfully combine to obtain as much wages as they may after consideration agree to insist upon receiving for their work."

III.

Among other cases cited is Wabash R. R. vs. Hannihan, 121 Fed. 563.

In Nation Fire etc. v. Mason Builders Assn., 169 Fed. 259, the U. S. Circuit Court of Appeals, Second Circuit, wherein a charge of combination between Mason Builders Assn. and Bricklayers Union was alleged; on Page 265 the Court said: "The direct object or purpose of a combination furnishes the proving test of its legality. It is not every injury inflicted upon third persons in its operation that renders a combination unlawful." * * *

"An agreement providing that no member of the Bricklayers' Union should work for any contractor who did not comply with the rules. Held, although such an agreement operated to complainants' prejudice, it was not a conspiracy against which complainant had any remedy" (P. 261).

And, in the case at bar, even though an agreement had been made whereby the Mill Company was to, if possible, by lawful means make it impossible to operate the Mill unless such Mill Company agree to an increase of wages, or submit the matter to arbitration, it cannot be said that the wage earners had exceeded their rights.

An unlawful conspiracy is defined to be "A combination between two or more persons to do an unlawful or criminal act, or to do a lawful act by criminal or unlawful means."

Goldfield Con. Mines Co. vs. Miners' Union, 159 Fed. 500. On Page 519 the Court said: "When free from contract obligations workmen have a legal right, singly, collectively or as a Union to strike; and having this right they have the further right to use such lawful means to make the strike effective as are not in conflict with the rights of others."

In the case of Bettner v. West Va., etc. Coal Co., 214 Fed. 716 the U. S. Circuit Court of Appeals for the Fourth Circuit (1914) held: "Strikers may not be restrained from using persuasion and other peaceable methods."

In the case of L. W. & W. R. R. v. Switchmen's Union, 158 Fed. 541, where an injunction was sought to restrain Switchmen from violating a contract by striking, the Court said: "I am inclined to think that defendants had the right to select a Committee to request a conference * * * and they could, if they chose to do so, delegate an officer of the Switchmen's Union to represent them and to advocate an adjustment of differences" (P. 545). And that is just what the employees of the Mill Company did in this case, delegate such duty to the Tri-City Central Trades Council.

In the case of Kelly v. Robinson, 187 Fed. 415, the U. S. Circuit Court of Appeals for the Eighth Circuit decided: "Union or other laborers have the right to quit the service * * * and they may by peaceable means persuade others to quit the service" (P. 417).

The U. S. Circuit Court of Appeals, Seventh Circuit, in the case of Arthur v. Oakes et al, 63 Fed. 310-27, wherein a District Judge had issued an injunction restraining engineers, conductors and switchmen from in any manner interfering with the operation of the road" * * *. On appeal, Justice Harlan said: "The Court below should have eliminated from the writ of injunction the words: 'And from so quitting the service of said receiver with, or without, notice, as to cripple the property or prevent or hinder the operation of said railroad' (P. 319). "The exercise

of employees of their right to quit in consequence of a reduction of wages could not be made to depend upon consideration of hardships or inconvenience to others" (P. 319).

And, in the case at bar, the Mill Company may not complain because the operation of the Mill is interfered with, for the reason the Company had the alternative, to either restore the former scale of wages, or arbitrate. They declined the proffer. The act of the Tri-City Central Trades Council was therefore a lawful act and as the Court of Appeals has said on Page 89, "Nothing appears in the record to indicate that this was not in good faith, or to raise a suspicion that the strike was a mere cloak to cover a deliberate purpose to interfere with the Plaintiff's conduct of its business, or to injure and destroy its business and property."

In the Hitchman Coal Co. v. Mitchell, 202 Fed. 512, the District Judge held that "The United Mine Workers of America was an unlawful conspiracy to injure the business of mine operators." But on appeal to the U. S. Circuit Court of Appeals for the Fourth Circuit (214 Fed. 685) the Court said: "He who seeks equity must do equity." "In other words he must come into Court with clean hands. If the Courts of this Country should by injunction relief protect the mine owner in the enjoyment of his property rights and restrain the laboring people from organizing their forces, by deciding such organization unlawful, would not the employer be in position to dictate the terms, or wages, of employees." * * *

"It should be definitely understood that the laboring men

have the right to use peaceable and lawful methods to unite their forces in order to improve their condition as respects their ability to earn a decent living" (Page 715). "For reasons set forth the decree of the Court below is reversed * * * at Plaintiff's cost" (P. 716).

And why was such Miners' Union held to be an unlawful combination by such District Judge? Because the trial Judge held, "in pursuit of its unlawful purposes to secure control of the monoply of mine labor" (P. 556). And what was this unlawful purpose? Nothing whatever, except the Miners' Union sought to make it obligatory that the Union be recognized. And in the case at bar all the Central Trades Council demanded was the restoration of the former scale of wages, or arbitration (Ab. 55).

"Notwithstanding, the Code of West Virginia provides that no persons, or combination of persons, by force, threats, menaces, or intimidation of any kind shall prevent or attempt to prevent from working in or about any mine any person or persons who have a lawful right to work about the same and who desire to so work. It was held that the Trade Union known as the United Mine Workers of America organized to secure reasonable wages and better working conditions among the mine workers of the United States by concerted effort to compel by peaceable means the improvement of mining conditions is not an unlawful organization, or combination, either under the statute, or at common law."

Mitchell vs. Hitchmann, etc., 214 Fed. 685.

On Page 696 the Court of appeals said:

"The learned trial Judge insists that the common law under which labor organizations have been declared unlawful in England is still in force in West Virginia and that therefore the Miners' Union is unlawful. * * * While there are decisions at Common law by the Court of England in support of such theory, yet such rule has not prevailed in this country except in a few of the earlier decisions of our Courts. Even in England combinations of this character were only proceeded against, as a general rule, where they were criminal or prohibited by statutory law." Id.

"The growth of development of the common law occurred when property rights were recognized as paramount to personal rights. At that time there was little if any concert of action on the part of the laboring people owing to their helpless condition, due in main to their ignorance. Their domination by the land owner and the capitalist was absolute. * * * Under such circumstances they were as helpless almost as slaves, and, is it any wonder, that we have so many decisions at common law * * * as well as the enactment of statutory laws, by virtue of which it was almost a physical impossibility for those who earned their living by honest toil to accomplish, by organized effort, those things necessary to elevate them to a place where they could assert those rights so essential to their welfare. The industrial development of the world within the last half century has been such as to render it necessary for the Courts to take a broader and more comprehensive view than formerly of matters pertaining to the relation of capital and labor." (P. 698) Id.

"It is now recognized by all civilized countries that labor is the basis of all wealth, and without which it is utterly impossible to accomplish anything in the industrial world" (P. 699).

"In this instance the Plaintiff has adopted a policy by which only non-union men be employed. If plaintiff may for the purpose of protecting its interests adopt a policy by which only non-union men can secure employment * * * by what process of reasoning can it be held that the defendant may not adopt the same method in order to protect their interests." (P. 703.) Id.

"Surely we have not reached the point where capital with its strong arm may adopt a plan like this for protecting its interests, while on the other hand the laboring classes are to be denied the protection of the law where they are attempting to assert their rights." (P. 704.) Id.

We have not attempted to defend lawlessness, if there was any, but we have contended for the right to do peaceable picketing. On this point we are willing that all of the Defendant's testimony and all of Complainant's witnesses be disregarded **except the officials of Complainant Steel Foundries**:

Hall, the Master Mechanic, testified: I never saw any acts of violence, nor any of the assaults. I only saw them stop the men and try to induce them to quit work" (Ab. 50).

Walcher, the Superintendent, testified. "I saw none of the men assaulted. They were trying to prevail upon the men from entering the plant (Ab. 31). I got to the plant about 6:30 A. M., go in and out at noon and stayed there until the plant

closed down for the night; saw no assaults committed; I saw no disturbance" (Ab. 31).

Floyd, the Chief Employment Agent, who was stationed at the main gate, testified: "I am at this gate from 7 A. M. until 8, 9 or 10 P. M. I didn't see any of the particular attacks that are mentioned. All I saw was the pickets talking to the men and the men being stopped" (Ab. 43).

Hoffman, Assistant Foreman, testified: "I have seen pickets about the Wabash depot, 150 yards from the plant (Ab. 45). The nearest I saw the pickets was 100 feet from the plant (Ab. 45). I saw no assaults. All I saw them do was to talk to the men" (Ab. 45).

Because Alderman Burton passed by the Mill every morning and evening to and from his work at the Laclede plant in Madison he was made a defendant in this case. He absolved himself, however, at the hearing. He testified that he "was not a member of any labor union. Passed by every morning and evening. I saw no disturbance there whatever and I passed there every day for three weeks" (Ab. 71).

We submit that if these five men are to be believed then there was peaceable picketing. It is not often we admit that one side can establish a proposition by simply quoting the testimony of adverse witnesses but we have done so in this case.

We do not believe that the statement charging the defendants with an intention of burning, or destroying the Mill, should have been made, in any event not without some evidence to substantiate such charge.

Walcher, the Superintendent, did say that "I was told that the statement had been made that the plant was going to be burnt" (Ab. 32). But when he was asked who told him or from whom he heard it, he could not say. This was nothing more nor less than "hearsay evidence" and should not have been given any credence by the trial Court. And why Mr. Davis, the President of the Steel Foundries, should say what he did to the President of the Central Trades Council, at the Commercial Club conference, we fail to understand. After Galloway had stated, "I said to Mr. Davis, some of the men they had imported in there as strike-breakers had shot at some of our men" (Ab. 56), Mr. Davis replied, "the only trouble with the man who done the shooting was that he didn't shoot straight enough" (Ab. 56). While Mr. Davis was present in Court when this statement was made, he did not go on the stand to make denial. Still it is not a pleasant matter to refer to, for up to the present controversy those connected with the Central Trades Council had had a high regard for Mr. Davis, and had not the charge been made that those connected with the Trades Council and other defendants contemplated burning down the Mill (Steel Mill) it would not have been alluded to.

Why counsel for Petitioner would contend that a Federal Court should follow the holding of a State Court is beyond our comprehension. They had their choice of forums. Had the bill been filed in the City Court of Granite City a defense could have been made at nominal expense. Or they could have filed the bill in the Circuit Court of Madison County and defendants

would have to go 15 miles only, to Edwardsville, the County Seat. But they chose to file in the U. S. District Court at Springfield, thus necessitating that defendants go 100 miles. If the American Steel Foundries wished to invoke the Criminal Code of the State of Illinois (Petition P. 25), with reference to a conspiracy the State Courts were open. The "Barnes case" (232 Ill. 425), cited on page 26, tends to uphold the view that wage earners have not the right to combine to compel an employer to pay a certain scale of wages and would indicate that wage earners have not the right to do peaceable picketing. But such holding was by a divided Court and we submit that the dissenting opinion (P. 411), written by Justice Farmer, concurred in by Justice Scott, is more in accordance with justice and the spirit of the times. However, as the said U. S. Court of Appeals had already passed on the two questions involved in the Allis-Chalmers case, 166 Fed. 45, there was nothing for the Court to do but follow its own ruling.

IV.

Duplication of III.

V.

We cannot understand why the statement should be made that "The Circuit Court of Appeals erroneously based its decision upon the authority of Iron Molders' Union v. Allis-Chalmers Company, 166 Fed. Rep. 45.

If there is any one person who should fully comprehend the meaning of a decision it should be the Judge, or Judges, who

comprise such Court. And the allegation that such Court "misapprehended the purport and applicability of the opinion in that case" is tantamount to saying that the Court did not give the matter careful consideration. And yet not only were written briefs filed, but the case was twice orally argued. Furthermore a petition for a rehearing was filed. Hence the statement that the decision was "erroneously based" is without merit.

VI.

The allegation that "this case arose from a conspiracy of strangers to the petitioner and its employees to injure and interfere with its business" is erroneous.

Under heading IV, on page 54, we find that the Tri-City Central Trades Council is alluded to as "a meddler." And on page 55 referred to as "an interloper." That "it was indulging in a gratuitous interference between the petitioner and its employees. In view of the evidence adduced we fail to see why such a statement should be made. The Record shows that the Tri-City Central Trades Council is composed of 37 local organizations, each of which has a representation of six members. The purpose of which organization is to "settle all disputes between employer and employee in relation to wages, etc., by arbitration instead of strike" (Ab. 54). "If we cannot settle by arbitration then we strike" (Ab. 57).

Galloway, the President, testified: "As President of the Central Trades I first learned of a controversy between wage earners and the Foundries from the various delegates of the

various trades who were refused any wages at that plant and made complaint to the Central Body that their wages were reduced from two to nine cents on the hour" (Ab. 54).

"After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its cooperation" (Ab. 55).

Cavanagh, Secretary of the Central Trades, testified: "At the regular meeting on April 15th a communication was received from the Machinists Union requesting that a special meeting be called of all the trades working at the American Steel Foundries to arrange some plan to have the wages restored that were in force when the plant shut down and the meeting was called for Sunday, April 19th. Ten or eleven trades were represented" (Ab. 72).

The Superintendent of the Mill, Walcher, testified that "Eighty or ninety per cent of the employees were old men. I presume these men were members of the various organizations" (Ab. 51).

With this undisputed testimony appearing in the Record we are at a loss to understand why Counsel for Petitioner would say that the Tri-City Central Trades Council is "a meddler" or "an interloper," for it was only performing the function for which it was created.

In the case of Mitchell v. Hitchman Coal Co., 214 Fed. 685-93 (decided 1914, U. S. Court of Appeals, Fourth Circuit), a

coal mine had closed down in June and suspended operations 50 days, and resumed operation upon a new mine basis employing only non-union men. The claim was made in that case that the strikers were not employees and that the Miners' Union of America was a meddler. And while the District Court ruled against the Miners' Union, on appeal the the trial Court was reversed.

In addition to the statement of Walcher that approximately 80 or 90 per cent of the employees were represented in the Trades Council (Ab. 51), Cook testified that he quit because of the reduction of wages (Ab. 70). "I didn't know what wages I was going to get when the plant started up; found it out in three weeks" (Ab. 70).

Churchill, a member of the Machinists' Union, testified that he quit because of the reduction of wages (Ab. 65). Lamb testified that when the strike came on four or five of the members were working at the plant (Ab. 60).

To warrant this Court in granting Certiorari there should be a showing made of **importance and gravity.** Instead, however, of making such showing it would appear instead that the application is made for delay. To find Court decisions appertaining to this heading cited by Petitioner it is necessary that a search be made through such petition.

The first case cited is the Keegan case, 150 Fed, 148 (P. 32) and a distinction is sought to be made because in that case it appears the strikers were in the employ of the defendant while in the case at bar the strikers were represented by the Tri-City

Central Trades Council. Likewise in the Everett case, 150 Va. 188, and the same point is made in Jones v. Maher, 166 N. Y. Supp. 180, where the men struck because the foreman was discharged (P. 34).

The Gray case, 91 Minn. 171, is on page 34 referred to, alleging that it was a controversy between employee and employer. And again on page 34 the Heffron case, 139 Mo. 639, and the Jones case, 131 Ga. 356, are cited for like reason. But we fail to see that these cases form any basis why a writ of Certiorari should be granted.

On Page 35 Counsel makes the broad statement to the effect "Iron Molders' Union v. Allis Chalmers Company supra not being authority nor justification for the decision of the Circuit Court of Appeals, that the "Barnes decision" of the Illinois State Supreme Court "should have been followed." Strange indeed to expect that a United States Circuit Court of Appeals should disregard its own holding and follow a State Court decision. And this, too, when the State Court was divided on the proposition of law involved (Barnes case, 232 Ill. 425). Furthermore, the State Court, in a later case, Kemp v. Division No. 241, 255 Ill. 213, held that it was **not a conspiracy** because men formed a union and agreed not to work with non-union men. "That the purpose of organizing labor unions was to gain strength and that the officials of the labor unions were merely the agent of those affected" (P. 220).

The United States Supreme Court holding (107 U. S. 21), cited on page 35 has no reference to lawful or unlawful com-

bination of labor, nor of peaceable picketing. The Court in that case does say, "that ordinarily the United States Court will follow a State Court holding as to **real estate** and the construction of **State Constitutions** or **Statutes.**" But there is no question of real estate title involved; nor is the construction, which is to be placed upon a statute, or any particular section of the State Constitution, at issue. **Not once** has any reference been made to any State statute or section of the State Constitution, until the filing of this petition (page 35). As we have heretofore said, "Had Petitioner desired the application of the State law to the issues involved, they should have filed their bill for injunction in the State Court. They chose, however, to submit to the Federal Court and should not now complain.

On Page 51 we find the Gee case, 139 Fed. 582, cited, wherein a trial judge held that there was no such thing as peaceable picketing. But why cite such case and seek thus to overrule the U. S. Court of Appeals. The District Judge so held in the case at bar and the U. S. Court of Appeals has held otherwise. We find on page 52 the Beck case, 77 N. W. 13, and that portion quoted wherein the Court said: "It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion." We do not, of course, know what the evidence showed in that case, but in the case at bar the evidence was conclusive that only peaceable picketing was authorized.

Why Counsel should cite the Gompers case, 221 U. S. 221, we cannot understand, for the reason the right to do peaceable picketing, or the right of wage earners to combine, and by law-

ful means to try and compel an employer to advance wages or submit the wage dispute to arbitration were not involved.

We hardly think the Court will consider the Jones case, 131 Ga. 336, cited on page 53, of sufficient moment to even give it much consideration.

The Sailors' Union case, 156 Fed. 450, cited on page 53, is not in point, and if it was it is only the opinion of a trial Judge. Whereas the U. S. Circuit Court of Appeals of the Seventh Circuit has twice gone on record as saying that wage earners may combine, and to enforce such combination may resort to peaceful picketing. Nor have we been referred to a U. S. Court of Appeals that has held to the contrary.

Whether it was upon this point Counsel cited the McKenna case, 30 Fed. Rep. 48 (See page 56 of Petition), we do not know, but the facts were not as they are in this case. The opinion says: "The defendants not being in Plaintiff's employ, and without any legal justification." In the case at bar there was justification, legal as well as otherwise, and the wage earners employed in such mill were represented by the Central Trades Council.

In the case of Hagerty, 116 Fed. 510, the complaint was based on the ground that the defendants were trespassing on the premises, the lands, of the Coal Company. In the case at bar not even one witness testified that there was trespassing.

On page 63 Counsel has cited the Cinti. Typo. Union case, 45 Fed. 135, wherein the question of boycotting a newspaper is

involved. While the controversy arose over unionizing the printers we fail to see any reference made to the right of wage earners to combine as they did in the case at bar under the head of the Central Trades Council. Nor does it appear the right of peaceful picketing was involved.

It would hardly be possible that this Court will pay much, if any, attention, to what a Judge in Connecticut said, but nevertheless the Glidden case, 8 Atl. Rep. 890 (decided in 1887), is, on page 64, referred to.

In that case it would seem a demand was made that the employes be discharged and others hired in their places, and the Court said this was wrongful dictation. But in the case at bar it was simply a question of wages. The Tri-City Central Trades Council did not demand that any employee be discharged.

On page 69 Counsel has cited the Frank case, 63 A. J. Eq. 443. In that case the Court held that "the right of a master to have a servant continue in his employ without molestation or enticement by any third party **is a property right.**"

Suffice to say in this connection that no employer has such thing as a property right in his employee. The Master had a property right in **his slave** prior to the issuing, by Lincoln, of the Emancipation Proclamaton, we concede. But at no time has the American wage earner conceded any such right to an employer.

This doctrine of Master and Servant is of antediluvian English origin and, as has been said in a recent case "The

Ancient English rule that labor unions were unlawful does not prevail in the United States in view of the changed conditions existing, the rule being now settled that labor may organize for its own protection and to further the interest of the laboring classes, and may strike and persuade and induce others to join them by peaceable means."

Mitchell v. Hitchman Coal Co. 214 Fed. 685 (Decided 1914). (Fourth Circuit.)

In the Kane case, 23 Fed. 748, it was held "that employees of a Receiver might abandon their employment and persuade others to do so, by peaceable and lawful means." And that is all the wage earners are contending for in the case at bar.

Why the Mayor of Granite City is referred to, on page 11, as being a member of the Socialist party can be but for one reason, to prejudice, if possible, the cause of the wage earners before the Honorable Court.

We have not understood Socialists to be law breakers. We heard "A Socialist" defined by the greatest living American, probably, as being "one who is endeavoring to improve conditions." Hence, if Kirkpatrick is doing that, instead of being a criminal he is a benefactor. Probably his sympathies were with the wage earners in their controversy with the Steel Foundries people, but that would not deter him from fulfilling his oath of office and to see that life and property were protected. When asked, with reference thereto, he testified: "I am ready to give police protection and did give it" (Ab. 58). "As Mayor of the city, I consider I have plenty of police to protect the

property; I have done that all along and would have done it without this injunction and am ready and willing to do it now" (Ab. 59).

Sheriff Henry testified: "I had two deputies down there and told them to investigate and they reported there was not much doing. If it was necessary we would have provided deputies" (Ab. 62). While a careful perusal of the evidence will show that in every instance where there was any assault or a mix-up of any kind between strike-breakers and others, it was a disputed question as to who was the aggressor. Be that as it may, we have not sought to make any defense of lawlessness. Those connected with the Tri-City Central Trades Council **did not authorize or countenance lawless acts.** and the Defendants testified positively that no unlawful act was committed by them, or either of them.

As to the statement made on page 11 to the effect that Galloway, the President of the Central Trades Council, was present when a riot took place, is erroneous. This mix-up took place on the 13th and at some distance from the plant. When Galloway was asked, with reference thereto, he said. "I was not at the plant or on the picket line on May the 13th, I worked until five o'clock in Madison, an adjoining town; got back to Granite City about 5:30 and then I was in Boyd's Garage until 6 o'clock. I did not strike any of the strike-breakers or other employees, leaving the plant, nor did I strike nor assault these parties on any other day other than the 13th" (Ab. 56).

The Debs case, 158 U. S. 564, has been quoted. The opinion in this case was predicated upon the theory that there was a boycott against interstate traffic and the handling of mails. In that case Justice Brewer, on page 577, said: "Employees may not be restrained from using persuasion and other peaceable methods, or from aiding strikers by furnishing money from a relief fund." All the wage earners desire in the case at bar is the right to combine and the right to do peaceable picketing.

The statement made on page 12 to the effect that, "after the restraining order was issued the plant was operated without interference," is probably true. After the Central Trades Council was held to be an "unlawful combination" (Ab. 78) and the District Judge had declared that "there is no such thing as peaceable picketing" (Ab. 80), the hundreds of wage earners represented by such Trades Council were shorn of every weapon. They accepted such decision of such trial Judge as the law and as good law abiding American citizens observed it. No doubt had the decision of such District Judge been adverse to such Steel Foundries, they would have disregarded the same "until such time as the Supreme Court might pass on the constitutionality of the question involved."

The Statute with reference to Conspiracy cited on page 25 has reference to where "persons conspire * * * with fraudulent or malicious intent, wrongfully and wickedly to injure the business or property of another * * *."

There is no evidence in the record that the officers of the Tri-City Central Trades Council, or other defendants, intended to perpetrate a fraud or by malicious intent wrongfully to destroy the business or property of Complainant.

In the case of People v. Young, 188 Ill. App. 208 (decided 1914), certain wage earners, members of the Carpenters' Union had, under this Statute, been indicted, because of a strike and alleged interference with others, and Counsel for the prosecution cited the Franklin Union case, 220 Ill. 355, but the Court of Appeals refused to follow such holding and on page 212 cited the Kemp case, 255 Ill. 213. On page 212 the Court said: "Union men or other employees have the right to seek by peaceable persuasion to induce others to leave or refrain from working for their employer."

While it would seem that the State Court did in the Franklin Union case, 220 Ill. 378 (decided 1906), hold against the right of organized labor to picket, such decision, it would appear was predicated on the theory that "Labor is property," and to interfere between employer and employee was to deprive a person of his property without due process of law (P. 378).

And in the Barnes case, 232 Ill. 424 (decided 1908). The Typographical Union made a demand for an eight-hour day and such union was held to be an unlawful combination (P. 432). But to this holding Justice Farmer dissented (P. 437) and the opinion written by him and concurred in by Justice Scott is more in accord with modern views with reference to

the rights of wage earners. When the question of the rights of labor unions to combine came for the third time before the State Supreme Court, Kemp v. Division No. 241, 255 Ill. 212 (decided 1912), the Court was not inclined to take such a drastic view of labor organizations; and on page 220 said: "Labor Unions have long since been recognized by the Courts of this Country as a legitimate part of the industrial system of the nation. The ultimate purpose of such organization is, through combination, to advance the interests of the members by obtaining for them adequate compensation for their labor and it has been frequently stated by the American Courts that the fact that this purpose is sought to be obtained through combination, or concerted action of employees does not render the means unlawful. The purpose of organizing labor unions is to enable those employees who became members to negotiate matters arising between them and their employers through the intermediation of Officers and Committeemen of the Union and to accomplish their ends through concerted action" (P. 221).

"The demand that Appellees be discharged, and the threat that unless the Railway Company complied with the demand of the Union would call a strike of the employees of the Railway Company, in effect meant no more than the mere statement that the Union employes would no longer work with non-union employees, and if the Railroad Company chose to retain in its employ the non-union men the union employees would quit the service of the Company" (P. 222). "It has been comparatively

but a short time since it was unlawful for workmen to associate themselves together into such organizations as are now known as Trades Unions for the purpose of improving conditions of labor. Such organization was formerly held to be a criminal conspiracy" * * * (P. 224). "An agreement by a combination * * * to advance the interests of the Union and not having for its primary object the purpose of injuring others in their business or employment is lawful" (P. 224). "As to whether or not the object which this bill discloses was sought to be attained by the members of the Union was a lawful one * * * the authorities are clearly in conflict. * * *

"The precise question has never been passed upon in this State * * *. We are not inclined to follow the cases cited by Appellee (Street Car Company); we are of the opinion that the cases holding the contrary view (cited by the Street Ry. Employees' Union) are supported by the better reasoning" (P. 225).

"Without organization the Workmen would be utterly unable to make a successful effort to maintain or increase their wages or to enforce such demands as have been held proper" (P. 226).

"Appellees rely upon the Franklin Union case, 220 Ill. 355, and the Barnes case, 232 Ill., 424." In these cases the employees had gone out on strike and injunctions had been secured. * * * The injunctions had been violated. * * * While the matters involved in each case grew out of acts following a strike of

union employees, the question of the right to strike was not involved (P. 232). The case at bar partakes of none of the elements of a boycott. The primary object of a boycott being to inflict injury upon another has been held to be illegal. Here the primary object of the combination is to further the interests of the organization and improve the condition of its members. Whatever injury may follow to others is merely incidental" (P. 234-5). And is that not what the Tri-City Central Trades Council contemplated? The latest ruling of the State Supreme Court would indicate, therefore, that such Court does not hold it unlawful for wage earners to combine.

It has been said that any employer of labor, be he ever so well meaning, stands in the way of future progress if he insists upon dealing with his workmen "as individuals." Should such policy succeed, it would no doubt mean the degradation and impoverishment of the working classes. If organized, the wage earners may bargain collectively; this means concerted action and the right of wage earners to be represented. It is apparent that one not in the immediate employ of a person is in a better position to represent the employees. Such representative feels more independent for the reason he is not subject to dismissal. For an employer to insist upon treating with his employees "as individuals" would mean that each one of the thousands in a plant would have the "individual contract" and that would mean long hours, small pay, the sweat shop, etc;

while "collective bargaining" would mean improved conditions, better workmanship and more exalted citizenship.

We submit that it may not always be possible for the employerand employees to agree, but when, as in the case at bar, the cardinal principle of the Tri-City Central Trades Council sets forth specifically "To settle all disputes between employer and employees in relation to wages, etc., by arbitration instead of strike" (Ab. 54). And, in this case had the Petitioner agreed to arbitration there would have been no strike; there would have been no conflict between strike-breakers and others, and there would have been no cause for the ill feeling that was later engendered. And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.

It is not uncommon for the employer to say that "peaceable picketing will interfere with my business." To not permit "peaceable picketing" the wage earner might retaliate by saying to the employer: "You are interfering with my right to live and enjoy the comforts of life."

Subsequent to the Civil War the wage earners of America have made marvelous strides. Wages have been increased, the work day shortened, the things he can buy, political privileges, legal rights, in skill, intelligence and the standing he has attained, the esteem in which he is held and the humane treatment which to him is accorded. But to obtain these, great sacrifices have been made by the pioneers of organ-

ized labor. Every advance of the wage earner has been through concerted action. Men interested in their fellow men have gone about the work of organization, devoting their time, without remuneration, to the cause. They dared to do this even when cognizant of the fact that they might be placed on the "black list," and not only they, but their loved ones as well be made to suffer for the necessaries of life. They made this sacrifice so that the conditions of the wage earners of America might be improved. **Not by means of violence,** for the one who would destroy life or property, or violate the law of the land, is a hindrance to the cause, but by insisting upon the right to organize, combine, and to enforce such combination by peaceable picketing, or other lawful means.

While Counsel for Petitioner has cited a number of Federal Court decisions they are all the opinion of a **District Judge** except two, viz: The Sailors' Union case, 156 Fed. 450 (Ninth Circuit), and the Allis Chalmers case, 166 Fed. 45 (Seventh Circuit). In the former it would appear that when a vessel was about to depart from a point on the California coast, employees were pinioned and imprisoned to keep them from going on the vessel. The Court, on page 453, said: "The purpose of the injunction was to prevent acts of lawlessness." Nothing of the kind occurred in the case at bar. The trial judge held it to be unlawful for the workingmen to combine (Ab. 78). And he held furthermore that there was no such thing as peaceful picketing (Ab. 80).

In the other case (Allis-Chalmers), the U. S. Circuit Court of Appeals held that workingmen did have the right to combine and did have the right to do peaceable picketing. Wherever these questions have arisen in other Circuits the holding of the U. S. Circuit Court of Appeals has been in conformity with the holding made by the Seventh Circuit in the Allis-Chalmers case.

Petitioner has not shown that the Supreme Court has decided the questions involved contrary to the ruling of the U. S. Circuit Court of Appeals. True, two Supreme Court decisions are cited: One the Burgess Case, 107 U. S. 20 (decided in 1882), but it does not allude to a combination of wage earners; nor of the right to do peaceable picketing. It appears that that case was cited: "because the U. S. Circuit Court of Appeals did not follow the holding of the State Supreme Court." And yet we have shown that the State Supreme Court itself in a later case (255 Ill. 213) would not follow the holding therein made. On Page 33 the U. S. Supreme Court said: "We do not consider ourselves bound to follow the decision of the State Court in this case. The Federal Courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to that of the State Courts and are bound to exercise through our judgment as to the meaning and effect of these laws" (P. 33).

The other Supreme Court holding cited is the Gompers' case, 221 U. S. 418. That was a suit instituted originally under the Sherman Anti-Trust law, and the question involved was, as to

whether or not the defendants were guilty of a contempt of Court (P. 441). While the District Judge had adjudged Gompers et al guilty, the Supreme Court reversed such ruling (P. 452).

Hence, without even one decision of a U. S. Court of Appeals, or one holding of the U. S. Supreme Court, to sustain the contention of Complainant, to the effect **that working men have not the right to combine**, and have not the right to do **peaceable picketing**, the petitioner is not in position to seriously ask this Court to award Certiorari.

We have referred to every case cited by Counsel in support of their Application for Certiorari, scattered as they are throughout the petition, and regardless of any particular heading. Still we did it to ascertain, if possible, on what theory the attempt was being made to have this Court award Certiorari, but without avail, for, in our judgment, no showing has been made to warrant the Court in granting such Application.

We therefore respectfully submit that the Application for a Writ of Certiorari should be denied.

FRANK C. SMITH,
Attorney for Respondents.

Office Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

AMERICAN STEEL FOUNDRIES, Petitioner, vs. **THE TRI-CITY CENTRAL TRADES COUNCIL et al.,** Respondents.	On writ of Certiorari to the United States Circuit Court of Appeals for the Seventh District.

Brief and Argument for Petitioner

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

Geo. Hornstein Co., Printer, Chicago.

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Brief and Argument for Petitioner

STATEMENT OF THE CASE.

The American Steel Foundries is a corporation organized under the laws of the State of New Jersey and authorized to transact business in the State of Illinois. For many years it has operated a plant at Granite City, Illinois. The plat introduced in evidence (Printed Rec., 22) shows that its property is fenced and covers in the neighborhood of twenty acres of ground. Within the enclosure are some eight or nine buildings of various dimensions, the largest of these being of irregular dimensions about 650 by 412 feet. The next largest building is ap-

proximately 225 feet by 425 feet. These buildings cover substantially one-third of the premises, are of various construction, some combustible and some non-combustible. The frame work of the buildings is wood in a great many cases and one is an entire wood building. (Printed Rec., 25-26.)

In normal times the plant employs about 1,600 men. It was operated as an "open shop," employing both union and non-union labor without discrimination. In November, 1913, because of depressed condition of business the plant closed and all employees were laid off indefinitely. On April 1, 1914, the petitioner undertook a partial resumption of operations at this plant, and a few men were employed at the plant to get it in running order. Prior to April 6, 1914, notices were posted about the works inviting workmen at a reduced scale of wages, in some departments from two to nine cents per hour, and in a good half of the departments without any reduction, and on April 6th the plant opened on a twenty-five per cent basis of its rate of capacity, employing from 300 to 375 men. On the resumption of work, such men were hired as applied for employment at the reduced wage, and about eighty or ninety per cent of the employees were men who had been in the employ of the plant when it closed the preceding November. (Printed Rec., 24-25 and 41.) **From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to the petitioner from any of the employees with regard to wages.** (Printed Rec., pp. 25 and 41.)

About the 20th day of April, 1914, the Tri-City Central Trades Council sent a committee headed by Earl Galloway, its president, to the plant of petitioner to remonstrate with the management against the scale of wages then being paid. Upon their application for admission at the gate of the plant, one of the members, the president, Earl Galloway, was admitted to the office of Mr. Walcher, the manager of petitioner. **Mr. Walcher inquired of Galloway if any of the committee was an employee of the Company or represented any of the employees of the Company, to which Mr. Galloway replied that they did not.** Mr. Walcher stated that the visit of this committee was rather peculiar; that he had never heard of any complaint from any of his employees, and was very much surprised, and stated further that if any of the employees had any complaint to make in regard to wages or working conditions that he was willing to listen to them as often as may be necessary. (Printed Rec., 25.)

The Tri-City Central Trades Council is an organization composed of six delegates from local organizations, which forms a central body. There are 37 affiliated bodies, composed of the building trades, carpenters, painters, plumbers, building laborers, plasterers, lathers, moulders, electricians, machinists, mill men, barbers, bar tenders, clerks and various other trades. Each organization is entitled to six delegates. Earl Galloway, the president, testified that the object of the Council is to "better the condition of the working classes; make conditions so that they can receive more of the wealth they produce and better working conditions

in general, and that his membership in the Council is by virtue of being a member of the Plumber's Union." (Printed Rec., 43.)

Promptly after the interview between Galloway and Walcher the manager of the petitioner, the respondents entered upon a conspiracy to force the petitioner to either operate its plants upon such terms as the respondent, the Tri-City Central Trades Council, should dictate or to close its plant.

In pursuance of such conspiracy, about the 22nd of April the **Tri-City Central Trades Council declared a strike at the plant, and circulated hand bills calling upon workmen and all labor to stay away from the plant as a strike was on.** (Printed Rec., 24.)

The hand bill is as follows:

"UNION MEN
AND ALL LABOR
STAY AWAY
FROM THE
AMERICAN STEEL FOUNDRY
GRANITE CITY, ILL.
ALL TRADES ARE ON STRIKE

For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.

By Order of Ways and Means.
COMMITTEE OF TRI-CITY CENTRAL TRADES COUNCIL.

Endorsed by Tri-City Central Trades Council." (Printed Rec., 24; Exh. B.)

In response to this action but two men (Printed Rec., 41), Isaac Cook and Tom Churchill (of the 375 men employed) left their work (Printed Rec., 24), and these men left without even making a complaint

to the manager (Printed Rec., 24), **and left only because the strike was on and they were ordered out by the respondent, Tri-City Central Trades Council.** (Printed Rec., 56 and 53.)

The "strike" of the Tri-City Central Trades Council having brought out only these two men, the Tri-City Central Trades Council, in furtherance of its conspiracy, proceeded on April 24, 1914, to place a body of pickets about the plant. These pickets were in a number of groups, usually consisting of three or four men, up to eight or ten men, in each group. (Printed Rec., 26.) This picketing failing to win the employees of the petitioner, the respondents to further carry out the unlawful conspiracy to force out the petitioner's men and close down its plant, entered upon a persistent course of intimidation and assaults upon the petitioner's employees, and threatened to destroy the property if necessary to accomplish their end. The assaults were numerous, were wanting in provocation and were brutal, and finally culminated in a general riot brought on by about 200 men, consisting of the pickets placed around petitioner's plant and those associated with them, and among whom were recognized Earl Galloway, the president of the Council, and others of the respondents. (Printed Rec., 29.)

Written application for protection was made by the petitioner to the Mayor of the city. (Printed Rec., 24.) The Mayor promised protection, but failed to furnish it. (Printed Rec., 47.) The Mayor was a witness in behalf of the respondent Trades Council, and testified that he was a member of the Socialist party, and elected on that ticket as

Mayor of the city; that prior to his election he was a steel worker in a steel mill for about ten years, and at the present time held an honorary membership in the Amalgamated Iron, Steel and Tin Workers, and that his sympathies were with the respondents. (Printed Rec., 47.) Application for protection was also made by the petitioner to the Sheriff of the County (Printed Rec., 24); the Sheriff promised to investigate, but neither offered nor gave protection. (Printed Rec., 49.)

On the 18th day of May, 1914, the petitioner's bill of complaint was filed in the United States District Court for the Southern District of Illinois, and application made for a restraining order. (Printed Rec., 1, 9.)

The order was issued on the morning of that day (Printed Rec., 10), and the Marshal went to Granite City that evening to serve it. After the issuance of the restraining order, and just prior to the arrival of the Marshal, a number of pickets assaulted, without provocation, two other employees of the plant, and left them lying unconscious upon the walk. (Printed Rec., 27.) From the time the restraining order was served until now, the plant has operated without any trouble, and has had an abundance of capable and efficient workmen to conduct its operations. (Printed Rec., 23 and 41.)

Answers were filed (Printed Rec., 15.) by the respondents to the petitioner's bill for injunction, and on June 8, 1914, the District Court proceeded to final hearing upon the pleadings and the evidence offered in open court. (Printed Rec., 20.) Thirty-four witnesses were sworn and testified orally. Documentary

and record evidence was offered by both parties. At the close of the testimony the case was decided by the Presiding Judge (Humphrey), (whose opinion appears at page 62, Printed Rec). On June 9, 1914, a final decree containing permanent injunction was entered. (Printed Rec., 66.)

The form of the injunction as entered by the District Court is as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents, and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Issac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with

it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

From the final decree an appeal was prosecuted to the United States Circuit Court of Appeals for the Seventh Circuit. The appeal was argued on January 26, 1915, a re-argument was ordered on May 23, 1916, and on December 6, 1916, an opinion was filed (Printed Rec., 87) reversing the decree of the

District Court, with direction to modify the same in accordance with the views expressed in the opinion. The suggested modification is as follows:

> "In so far as the decree restrains all picketing and all persuasion and all interference with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this court for the modification of the decree in the *Allis-Chalmers* case will afford sufficient and proper guidance for the modification of the decree herein."

The Court of Appeals having failed to definitely fix the form of modification, we must have reference to the opinion and order in *Iron Moulders' Union* v. *Allis-Chalmers Company,* 166 Fed., 45, for more definite information on the subject. The modification in *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* apparently adopted by the Circuit Court of Appeals substantially eliminates from the final decree in the instant case any injunction against persuasion, against picketing and against interference with the lawful conduct of the business of the petitioner unless such persuasion, picketing and interference are accompanied by intimidation, force and assault.

The bill for injunction was not a bill to restrain the organization of a Union; it was not to restrain any employee from abandoning his employment; it was not a bill to keep the peace; it was not a bill simply to enjoin a mob and mob violence. Neither

the right of any laborer or any number of laborers, to quit work was challenged, nor the right of any employee of the petitioner to strike and abandon his work is involved. The scope and purpose of the bill was to restrain an unlawful combination and conspiracy of and amongst the respondents, none of whom were employees of the petitioner, nor representatives of the petitioner's employees, from interfering with the petitioner in the operation of its plant and from interfering with its employees in their right to work for the petitioner and discharge their contract obligations to the petitioner.

The conspiracy aimed at involves **no right of a union to strike, nor any right of any union to call away its members from the work at this plant. The bill here was to enjoin meddlers and strangers to the petitioner and the petitioner's employees from carrying out a conspiracy to force and compel the employees of the petitioner to strike, when the employees themselves did not and would not strike—and to close down the plant of the employer unless the demand of these interlopers and strangers for a change in wages then satisfactory to the employees was granted—the employees, themselves, not asking any change.**

PETITIONER'S BRIEF.

I.

Facts.

(a) Respondents entered into an unlawful combination and conspiracy to injure and interfere with the property and business of the petitioner; to force and compel the employees of the petitioner to violate their contracts of employment with the petitioner; to compel the employees' abandonment of their employment with the petitioner; to force petitioner to change and raise its scale of wages paid to its employees without complaint or authority of the employees; to force petitioner to raise the scale of wages paid to its employees or suffer shutting down its plant and destruction of its property.

(b) Respondents sought to effectuate and carry out their unlawful combination and conspiracy through the means and instrumentality of pickets, violence, intimidation and assault.

(c) Respondents were utter strangers to petitioner. Respondents as third parties unconnected with either the petitioner or its employees, and without authority of its employees, formed the illegal combination and conspiracy to force petitioner to change and raise the scale of wages being paid and satisfactory to its employees.

(d) Respondents through a Committee, none of whom was an employee of the petitioner, sought to carry out the foregoing illegal combination and conspiracy by demanding change and increase in scale

of wages paid to the employees, without representing the employees or being authorized by such employees to act for them.

(e) Respondents for the purpose of effectuating and carrying out such illegal combination and conspiracy without representing the employees or being authorized to act for them "struck" the plant and business and operations of petitioner, and by pickets, intimidation, force and assault upon the employees and the property of the petitioner sought to force the employees to violate their contract of employment; to abandon and terminate their service with the petitioner; to prevent the employees from continuing their work and service at the plant of the petitioner; to "shut down" the petitioner's plant and operations unless it complied with the demands of the respondents to raise the scale of wages, in the absence of complaint or request for such increase from the employees themselves; to destroy the property of petitioner if necessary to carry out their illegal combination and conspiracy.

II.

Petitioner's bill of complaint is based upon statutes and the decisions of the Supreme Court of the State of Illinois, which should control the decision in this case.

Section 46, Chapter 38, Criminal Code, as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * **business or employment or property of another**

* * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000, or both."

Section 158, Chapter 38, Criminal Code, as follows:

"If any two or more persons shall combine **for the purpose of depriving the owner or possessor of property of its lawful use and management,** or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."

Barnes v. *Typographical Union,* 237 Ill., 425.

Doremus v. *Hennessey,* 176 Ill., 608.

Burgess v. *Seligman,* 107 U. S., 20.

III.

The rule in Illinois followed by courts in other states and jurisdictions.

Atchison, Topeka & Santa Fe v. *Gee,* 139 Fed., 582.

Beck v. *Railway Teamster's Protective Union,* 77 N. W., 13.

Gompers v. *Bucks Stove & R. Co.,* 221 U. S., 418.

Jones et al. v. *Van Winkle Gin & Machine Works,* 131 Ga., 336 (62 S. E., 237).

Sailors Union v. *Hammond Lumber Co.,* 156 Fed., 450.

IV.

Iron Moulders Union v. *Allis-Chalmers Co.*, 166 Fed. Rep., 45, not applicable or authority in this case.

V.

The law as laid down in *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S., 229, is decisive of the instant case. The rule there announced is sustained in cases in other states and jurisdictions.

Old Dominion Steamship Company v. *McKenna*, 30 Fed. Rep., 48.

United States v. *Haggerty*, 116 Fed. Rep., 510 (C. C. W. Va., 1902).

Casey v. *Cincinnati Typographical Union No. 3*, 45 Fed. Rep., 135 (C. C. Ohio 1891).

State v. *Glidden*, 8 Atl. Rep., 890 (Conn. 1887).

Jersey City Printing Co. v. *Cassidy*, 53 Atl. Rep., 230 (N. J. 1902).

Frank v. *Herold*, 63 N. J. Eq., 443; 52 Atl., 152, 1901.

Flaccus v. *Smith*, 199 Pa., 128.

VI.

Force and violence used by respondents to effectuate and carry out their illegal combination and conspiracy so brutal and so lawless that permanent injunction most comprehensive in form and general in terms necessary for the protection of petitioner's business and property and employees.

Sailors Union v. *Hammond Lumber Co.*, 156 Fed. Rep., 450.

ARGUMENT.

I.

Facts.

There were three issues of fact presented by the pleading on the hearing in the District Court.

First, The combination and conspiracy of the respondents to injure and interfere with the property and business of the petitioner. There was no dispute of the facts on that issue. The respondents admitted calling the strike and the purpose thereof. The District Judge made his finding with reference to such conspiracy, as appears in his opinion (Appendix), as follows:

> This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trade of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of

sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests; viz., the freedom of the individual to contract. If a man has anything to sell--suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for the hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We wouldn't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law and there is no other view to take of it. **This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it.** (Printed Rec., 62.)

This unlawful purpose stands admitted, and one of the respondents on cross examination boldly testified (Printed Rec., 56):

"I wanted to get all the men out of the plant. I wanted to quit work and didn't want anybody else to work in my place. I knew if they didn't have men to fill my position the plant couldn't run and I was trying to keep them from getting men to fill those positions. I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade the man not to take the places of the strikers the Company would restore the wages. **I was trying to make them restore the wages or close down the plant.**"

Counsel for respondents in the brief filed in this case in response to the petition for *certiorari* freely states on page 35:

> "**And, in this case had the petitioner agreed to arbitration there would have been no strike; there would have been no conflict between strike-breakers and others, and there would have been no cause for the ill feeling that was later engendered. And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.**"

The evidence of conspiracy is clear. There can be no dispute in that respect. The Judge of the District Court saw and heard the witnesses as they testified, and his opinion and decision under the circumstances should be persuasive, indeed conclusive, on the facts.

Second. The second issue of fact is the carrying out of the conspiracy and combination through the means and instrumentality of pickets, violence, assaults, and threats to destroy petitioner's property. While here and there some one of the respondents sought to place a different construction upon the

cause and character of the assaults, nevertheless the fact, and the evidence supporting the fact, remain practically undisputed, and upon this point the District Judge made his finding, as shown in his opinion (Appendix), as follows:

> The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful.
>
> However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the conditions under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes,

which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There can be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you. (See Printed Rec., 64.)

And the Circuit Court of Appeals on this point says (Appendix):

"Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which, if carried out, would have resulted in the destruction of property. **The District Judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.**" (See Printed Rec., 89-90.)

Although we contend any form of picketing—even peaceful and unthreatening—was not permissible and was properly restrained by the District Judge, we shall later in this brief call attention to the evidence upon the picketing practiced in the instant case which makes the expression of the Circuit Court of Appeals, though sustaining the District Judge, a colorless finding upon indisputable evidence of brutality and lawlessness.

Third. The third issue of fact in the case is that the respondent, Tri-City Central Trades Council, called the strike at petitioner's plant; that at the

time such strike was called the plant of the petitioner was in peaceful operation; that no complaint or dissatisfaction with reference to wages or working conditions existed amongst the employees of the petitioner, and none had up to the time of the strike been expressed to the petitioner or its management; **that none of the employees of the petitioner were members of the respondent, Tri-City Central Trades Council; that the respondent, Tri-City Central Trades Council, did not represent any of the employees of the petitioner; that the respondent, Tri-City Central Trades Council, was a stranger to the petitioner, and had no relationship to it**; that the only men who responded to the call of the strike by the respondent Trades Council were Churchill, who was not a member of the Trades Council, but was a member of the Machinists' Union, and Cook, who was not a member of the Trades Council and had never been a member of any union.

The evidence upon this issue of fact is indisputable. The Circuit Court of Appeals, however, without justification in the record, and without evidence to warrant it, says (Appendix):

> "Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest."

In view of this statement in the opinion of the Circuit Court of Appeals, we feel constrained to call this court's attention to all the evidence in the record on this subject.

Mr. Walcher, the manager of petitioner, testified (Printed Rec., 24):

"At no time between April 1, 1914, and the time the restraining order was issued was either the defendants McKenny, Galloway, Thornberg, (William), Holmes, C. Thornberg, Burton, Roach, Aldridge, Lamb, Ishman, McDonough or Gerlich in the employ of the American Steel Foundries. The defendants Cook and Churchill were the only ones in our employ during that time."

Printed Rec., 40:

"Question by the Court: If men were unmolested would you have any trouble filling all the places you want?

"A. I think not. . .

"Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none."

* * * * * *

Printed Rec., 41:

"Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from any one in our employ."

"When we closed in November all our employes were discharged; they were laid off indefinitely on account of closing down the plant. When we opened April the 6th we employed whoever we saw fit; whoever applied for employment at the gate. Started the plant the same as a new plant. We only had called for in round numbers, three hundred men, and laid off approximately thirteen hundred men. Eighty or ninety per cent of the employees were old men. I assume these men were members of various organizations; I can't state definitely as to that."

Earl Galloway, president of Tri-City Central Trades Council, testified (Printed Rec., 45):

> "I am a plumber and were never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there."

B. F. Lamb testified (Printed Rec., 47):

> "My business is representing the Union National Association of Machinists; I am a machinist by trade. I live in St. Louis. The Tri-City Central Trade Council is in my district, therefore I am in Granite City quite often; I have a local there and they are affiliated with the Council."

Printed Rec., 48:

> "I never worked for the American Steel Foundries."

W. J. Hartbeck testified (Printed Rec., 50):

> "I live at St. Louis, am a blacksmith, a member of the blacksmiths' union and have no connection witth the Central Trades Council of Granite City."

Printed Rec., 51:

> "I never worked for the American Steel Foundries."

Harry McKenny testified (Printed Rec., 51):

> "I live in Granite City and am a steam fitter and belong to one of these unions."

Printed Rec., 52:

> "I am a steam fitter and did not work for the complainant in April and May, 1914. I did work for them in 1907, but quit because I was ordered to help a machinist that wasn't a union man."

Thomas Churchill testified (Printed Rec., 52):

"I am a machinist. I was working for the plant when it closed down in November and went back to work when they opened but got an increase over the new men they had, but still it was a reduction at the same time. I am connected with the machinist's labor union, am a member."

Printed Rec., 53:

"At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had to take at the time being and I haven't had anything better since. I didn't get a better job. **I quit because these fellows asked me to go out.**"

Ted Ishman testified (Printed Rec., 54):

"I am a craneman and reside at Granite City, a member of the cranesmen's union affiliated with the Tri-City Central Trades Council."

Printed Rec., 54:

"I was not working at the plant this spring after it resumed operations."

Clay Holmes testified (Printed Rec., 55):

"I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

C. E. Gerlich testified (Printed Rec., 55):

"I am a machinist residing in St. Louis. I worked for the complainant but haven't for two years. I belong to the machinists' union. I work at the Commonwealth plant, about two blocks away from this plant."

Isaac Cook testified (Printed Rec., 56):

"I am an electrician and belong to none of the unions. I worked at the plant about three weeks after it started up."

* * * * * *

"I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, and **I quit because they said there was a strike on.**"

C. L. Burton testified (Printed Rec., 57):

"I reside at Granite City, an Alderman of the Fifth Ward. I work at the Madison Car Shops. In April and May I was working at the Laclede Steel Plant in Madison. I never worked for the Steel Foundries."

Edward Wade testified (Printed Rec., 58):

"I am a sewer man or plumber's laborer. I am Treasurer of the Central Trades Council."

E. H Taylor testified (Printed Rec., 59):

"I am an electrician, a member of their union and of the Central Trades Council. I am on the board of trustees of the Council."

* * * * * * *

"I was not working for the American Steel Foundries."

Ed Roach testified (Printed Rec., 59):

"I am a machinist, a member of their union and reside in East St. Louis."

* * * * * * *

"I haven't worked for the foundries since a year ago this month."

T. M. Cavanaugh testified (Printed Rec., 57 & 58):

> "At the regular meeting on April 15th of the Tri-City Central Trades Council a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday the 19th."
>
> * * * * * * *
>
> "On April 15th we had a communication from the unions representing some of the trades working at the Foundries. We had complaints from the men themselves working at the foundry. I couldn't state their names. I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

We have quoted from the evidence of all the witnesses in the case, respondent or otherwise, and the court will observe that **no member of the Trades Council was working for or was an employee of the petitioner at the time in question.** The only two employees of the petitioner, as we have above shown, who quit because of the interference by the respondent, Trades Council, were Cook, who was **not** a member of the Trades Council nor a member of any union, and Churchill, who was **not** a member of the Trades Council, but claimed to be a member of a Machinists' Union. The testimony of Cavanaugh does not support the statement in the opinion of the Circuit Court of Appeals that "many

of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council."

Cavanaugh testifies that they had complaints from the men themselves working at the foundry; that he can't state their names, nor state the name of any employee who made any complaint. Surely this testimony of Cavanaugh cannot be construed into proof sustaining the statement of the Circuit Court of Appeals just quoted. We repeat there is no evidence in this record that any of the employees of the petitioner except one, Churchill, was a member even of any union. The record is barren of any connection or relationship between the Tri-City Central Trades Council and the petitioner, or its employees.

Even Earl Galloway, the president of the Trades Council, with reference to the meeting with petitioner's manager before **it called the strike** testified as follows (Printed Rec, page 44):

> "A Committee was appointed by the Central body to wait upon this corporation to arbitrate the question. I forget all of the Committee; they were ten and I was one of them. We went to the plant and the gate man informed me the spokesman or chairman would be permitted to enter. As chairman I went in to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; **he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions**; he stated that he would not meet with any representative of or-

ganized labor; if anybody around that plant felt mistreated or had any grievance to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back.

"This was about the 20th or 21st of April. **It was reported back to the joint board and a strike was declared on the plant.** Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts, I believe."

Walcher, the manager of petitioner's plant, testified, as above quoted (Printed Rec., 41):

"Earl Galloway was admitted to my office and told me there was a Committee that represented the labor organizations; **I asked him if the Committee represented our employees and he said they did not,** and I told him we didn't recognize any labor organizations; we had never had any complaints or demands from any of our employees."

The court will note not only that the statement of the Circuit Court of Appeals above quoted is unsupported by the evidence in the record, but is in the very teeth of the testimony, which conclusively and indisputably refutes that statement. And it appears clearly and conclusively that the employees of the petitioner did not strike; that the employees of petitioner did not complain, either of wages or of conditions; that the employees of petitioner did not express dissatisfaction or discontent; that the employees of petitioner did not interfere with the operation of the petitioner's plant or leave its employ, but that, **the Tri-City Central Trades Council and its**

officers, total strangers to the petitioner, "struck" the plant. The Tri-City Central Trades Council, neither representing the petitioner's employees nor even claiming to represent them, sought not only to coerce the petitioner into a change of the terms of contract between itself and its employees without knowledge or action on the part of the employees, but even sought to coerce the employees and workers themselves to violate their contracts with their employer; terminate their relationship with their employer; leave the employment of their employer, and to cause a strike at the plant; and purely in a meddling and interloping capacity secure a wage which the employees themselves did not seek; and if that end could not be attained in any other way, resort to intimidation, violence, assault and, if necessary, destruction of petitioner's property.

II.

The Statutes and Decisions of the Supreme Court of Illinois Should Prevail.

The Circuit Court of Appeals rested its decision upon *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* and the cases there cited, and entirely ignored the fact that the bill filed here is bottomed upon two sections of the Criminal Code of the State of Illinois and upon the principles of law applicable to the facts, as established by the Supreme Court of Illinois, and making the rule in Illinois with respect to the subject-matter here controlling.

The two sections of the Criminal Code referred to are:

Section 46, Chap. 38, entitled "Criminal Code" of the State of Illinois, which reads as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * **business or employment or property of another** * * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000, or both."

The other section of the statute is Section 158 of the same chapter, reading thus:

> "If any two or more persons shall combine **for the purpose of depriving the owner or possessor of property of its lawful use and management**, or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."

The court will note as above quoted from the opinion of District Judge Humphrey (Printed Rec., 62):

> "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a **combination is unlawful.**"

The law of Illinois applicable to the case at bar is well settled.

Barnes v. *Typographical Union,* 232 Ill., 425, in which Justice Cartwright says, at page 431:

> "It is clear that the union and its members were not in competition with the complainant in respect to labor or anything else. The members of the union had left the service of the complainants, and their only purpose was to prevent the complainant from carrying on their business. They were endeavoring to compel the complainants to submit to their dictation by depriving the complainants of their legal right to employ such laborers as they might choose. If there is a combination to injure a person because he refuses to comply with some demand where he has a legal right to refuse, there is no way of classifying such acts in furtherance of such purpose as competition. The acts alleged in the bill were directed primarily against the complainants for the purpose of doing them harm, and that sort of action is not lawful competition.
>
> "The whole scheme as set out in the bill was to injure the complainants for the purpose of compelling them to yield to the union their absolute legal right to manage their own business in their own way * * * **it follows that any interference with that right whether by threats or intimidation or by persuasion accompanied by actual malice is a legal wrong.**"

At page 434 the court further says:

> "The facts stated in the bill authorized an injunction to prevent carrying out the scheme of the defendants.
>
> "It is next contended that if any injunction was authorized, the injunction granted was too broad in enjoining appellants from peaceful picketing of complainants' premises and from

congregating about or near their places of business for the purpose of inducing or soliciting employees to leave the employment. It is contended that a peaceful picket line around a shop is entirely lawful. But this court has held otherwise in *Franklin Union* v. *People, supra,* where endorsement was given to the doctrine of *Beck* v. *Railway Teamsters' Protective Union,* 118 Mich., 407, by quoting therefrom, as follows: 'To picket complainants' premises in order to intercept their teamsters or persons going there to trade is unlawful. It, itself, is an act of intimidation and an unwarrantable interference with the right of free trade. The highways and public streets must be free to all for the purposes of trade, commerce and labor. The law protects the buyer, the seller, the merchant, the manufacturer and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done ten or ten hundred feet away.' The court also gave its approval to the decision in *Vegelahn* v. *Guntner,* 167 Mass., 92. In that case a patrol of two men in front of the plaintiff's factory, maintained as one of the means of carrying out the defendants' plan, was held to be an unlawful interference with the rights of the employer and the employed. The patroling or picketing of the premises was considered to have elements of intimidation, and the court decided that the motive of obtaining better wages for themselves on the part of the defendants did not justify maintaining a patrol in front of the complainant's premises as a means of carrying out their conspiracy. The very fact of establishing a picket line is evidence of an intention to annoy, embarrass and intimidate, whether physical violence is resorted to or not. There have been a few cases where it was held that picketing, by a labor union, of a place of business is not necessarily unlawful if the pickets are peaceful and well behaved, but if the

watching and besetting of the workmen is carried to such a length as to constitute an annoyance to them or their employer it becomes unlawful. But manifestly that is not a safe rule and furnishes no fixed or certain standard of what is lawful or unlawful. Any picket line must result in annoyance both to the employer and the workmen, no matter what is said or done, and to say that the court is to determine by the degree of annoyance, whether it shall be stopped or not would furnish no guide, but leave the question to the individual notions or bias of the particular Judge. To picket the complainants' premises was in itself an act of intimidation and an unwarrantable interference with their rights. Pickets were, in fact, guilty of actual intimidation and threats, but if they had not been, the complainants were entitled to be protected from the annoyance.

"Another supposed right of the defendants asserted by counsel is the exercise of the power of persuasion, and it must be conceded that argument and persuasion are lawful if not directed to the accomplishment of an illegal and unlawful purpose. The object of the defendants as set forth in the bill was illegal, and if there is a malevolent intent to produce an illegal result, and it is produced, it makes no difference whether it is accomplished by mere persuasion or by physical violence. (*Curren* v. *Galen*, 152 N. Y., 33.)"

In the case of *Doremus* v. *Hennessey*, 176 Ill., 608, the court speaks in the following language:

"The law is well settled that every person shall be protected in the right to enter into contracts or in refusing to do so, as he shall deem best for the advancement of his own interests, without interference by others. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere

with another in the conduct of his lawful business, **and any attempt to compel an individual firm or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees, is not only unlawful and actionable, but is an interference with the exercise of the highest civil right. * * * All parties to a conspiracy to ruin the business of another because of his refusal to do some act against his will or judgment are liable for all overt acts, illegally done pursuant to such conspiracy and for the subsequent loss, whether they were active participants or not.''**

We revert here again to the admitted purpose of the Tri-City Central Trades Council in striking petitioner's plant as admitted on the trial and proved by the testimony of the defendant Cook, page 56:

> **''I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade the men not to take the places of the strikers the Company would restore the wages. I was trying to make them restore the wages or close down the plant.''**

and confirmed in counsel's brief in answer to the petition for *certiorari*, page 35:

> **''And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.''**

To overcome the petitioner's contention that the Illinois rule, as expressed in *Barnes* v. *Typographical Union, supra*, should obtain and be followed in the case at bar, counsel for respondents, in his reply to petition for certiorari, cited *Kemp* v. *Division No.*

241 Assn., 255 Ill., 213. A reading of the majority opinions in that case will demonstrate clearly that *Barnes* v. *Typographical Union, supra,* was not overruled or intended to be overruled; also that it does not bear upon the question involved here. The purpose of the bill in that case as stated by the court there, was as follows:

> "The only reasonable conclusion to be deduced from the allegations and prayer of the bill is that appellees by this proceeding seek to restrain the union and its officers from calling a strike of its members, the obvious purpose of the injunction sought being to prevent the union employees of the Railways Company from quitting their employment **in accordance with the vote previously taken, by which those employees as members of the union declared that they would cease to work with men** who, after receiving benefits through their organization refused to continue members. * * * The question presented for our determination, therefore, is whether a court of equity is authorized upon application by the non-union employees to restrain the union and its officers from calling a strike of the union employees **in accordance with the vote previously taken by the union employees as members of the union,** where the purpose of the proposed strike is to compel the employer to discharge non-union employees who are engaged in the same class of work."

The court will note that the question of whether or not there should be a strike was submitted to and voted upon by the employees of the Railways Company, and that representations or action of the organization in dealing with the Railways Company was upon the express authority conferred by the vote of the employees.

The case at bar presents no such situation. The Tri-City Central Trades Council arrogated to itself the prerogative and privilege to demand from petitioner a change in wages, without authority or request of the employees.

The court in *Kemp* v. *Division No. 241 Assn., supra*, further says:

> "The purpose of organizing labor unions is to enable those employees who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union, and to accomplish their ends through concerted action. **If duly authorized by the employees to adjust any controversy arising between them and their employers, the union, its officers and committees, are merely acting as agents of the employees in the matter.** If the union employees have the legal right to inform their employers of their refusal to work with the appellees, they had the legal right to convey that information to the employer through an agent or agents, and the agent or agents who so act would not commit an actionable wrong thereby, nor by reporting back to the union employees the result of the conference with the employer."

III.

Iron Moulders Union v. Allis-Chalmers Co., supra Not Applicable or Authority in This Case.

The purpose proved is clearly contrary to the statutes of the State of Illinois and contrary to the law of that state as established by the decisions of the Supreme Court.

The Circuit Court of Appeals saw fit to ignore and disregard the statutes of Illinois and the decisions

of the Supreme Court of that state. It undertook to decide this case upon the authority of *Iron Moulders' Union* v. *Allis-Chalmers Company, supra.* That case we insist is not authority in support of the decision, and the cases cited in support of the rule there laid down deal with an entirely different class of cases than the case at bar, and do not sustain the opinion of the Circuit Court of Appeals herein. Indeed, Judge Grosscup, a member of the court deciding *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* in a separate opinion demonstrates that the decision there is inapplicable to the instant case and rather prophetically anticipated just such a misinterpretation and misapprehension of that decision as has happened here.

In each of the cases cited by the Circuit Court of Appeals in support of its opinion there **existed a controversy between employer and employee**; a strike had been called by the **employees** and **not by any stranger** to the employer, nor outside organization not representing the employee.

As a matter of fact it cannot be said that there ever was a strike in the ordinary acceptation of the term. There was here a deliberate conspiracy and undertaking on the part of this Trades Council for reasons and purposes of its own, to strike down the industry of the petitioner; to force and coerce the employees who were satisfied and contented to leave their employment; violate their contracts of employment with their employers; dictate to the petitioner terms and conditions upon which it could employ its men; substitute itself for the employer and the employee as the contracting parties, and in

that respect, failing to secure more than two of the employees to withdraw from the plant, proceeded to intimidate, assault, beat and injure the employees of the petitioner, and that not being sufficiently effective threatened to destroy the petitioner's plant.

The lexicographers have defined what a strike is, and in every instance the definition proceeds upon the theory that it is bottomed upon a controversy between **employer** and **employee**.

Bouvier's Law Dictionery defines a strike as follows:

> "A combined effort by workmen to obtain higher wages or other concessions from their employers by stopping work at a pre-concerted time."

The evidence in this record shows there was no such act by the workmen and employees of this petitioner.

Black's Law Dictionary, defining a strike, says:

> "The act of a body of workmen employed by the same master in stopping work altogether at a pre-arranged time and refusing to continue until higher wages or shorter time or some other concession is granted."

The evidence in this record shows that the body of workmen employed by the petitioner did not stop work at a prearranged time or any other time, and did not refuse to continue their employment until higher wages or shorter time or other concession was granted.

The Century Dictionary defines a strike to be:

> "A concerted or joint quitting of work by a body of men or women for the purpose of coercing their employer in some way as when higher

> wages or shorter hours are demanded or a reduction of wages is resisted—a joint refusal to work as a coercive measure."

The evidence in the case shows the men did not quit work for the purpose of coercing petitioner; on the contrary it shows the men were contented and without complaint.

In *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* the controversy arose out of a **strike of the employees** of the Allis-Chalmers Company as a result of a united effort on the part of the members of all foundries unions. And in the separate opinion Judge Grosscup called attention to the differentiation between a case involving a strike of **the employees actually pending,** as against an effort, without such strike existing, to interfere with the business of the complainant, as occurred in the case at bar. Judge Grosscup says:

> "And it is with respect to this somewhat anomalous relationship that, as I understand it, this opinion speaks; a statement that it seems to me ought to be made to confine the opinion to the actual situation to which it is intended to relate—to differentiate what we say from what might arise in cases where, **neither strike nor lock-out pending,** persuasion is resorted to to induce other employers not to employ given applicants for employment, or to persuade employees not to take employment with given employers, **upon which questions we do not, as I understand it, express** any opinion."

Judge Grosscup in this separate opinion defines a strike as follows: "A strike is cessation of work **by employees** in an effort to get for the employees more desirable terms."

The court will find that in each of the other cases cited in support of the authority of *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* there was an actual dispute between employer and employee and an actual "strike" by the employees.

In *Pope Motor Car Co.* v. *Keegan,* 150 Fed., 148, it appears affirmatively that there was a strike by the employees of the Pope Motor Car Company, and the strike was due to a refusal to submit to the diction of Keegan and Keck, who were officials of the International Association of Machinists, **and that all the defendants in that case except Keegan and Keck had been in the employ of the complainant company, and at the time of the filing of the bill were out on a strike.**

In *Karges Furniture Co.* v. *Amalgamated Wood Workers' Local Union,* 165 Ind., 421, it appears on April 1, the demands upon the employers not having been complied with, **all the plaintiff's employees but about twenty non-members of the union, each one acting voluntarily in concert with others, and in pursuance of the agreement and vote, quit their employment and left the plaintiff's factory.**

In *Everett* v. *Typo Union,* 105 Va., 188, it appears:

> "In September, 1905, the Typothetae finally refused to grant the eight-hour day, and thereupon the Typographical Union instructed the local unions in the different cities of the United States (among them the City of Richmond) to declare a 'strike' where the eight-hour day was refused; and the appellants, members of Richmond Typothetae, the owners and operators of printing establishments in the City of Richmond, still refusing to grant the eight-hour

> day, Typographical Union No. 90, **the employees of appellants, on September 11, 1905, went out on a 'strike.'"**

In *Jones* v. *Maher*, 116 N. Y. Supp., 180, it appears that the employer in that case made certain discharges, including five foremen, and it further apears (page 182):

> **"Upon the discharge of the foremen, most of the people working under them left with them at noon, and when Schofield arrived, others, including the defendant Volkman, one of the foremen discharged that day, also left the factory. The discharged foremen and the employees who had stayed out or gone out, some 70 to 90 in all, thereupon held a meeting, and with the aid and counsel of Schofield organized a strike."**

Gray v. *Building Trades Council*, 91 Minn., 171, was a case of boycott involving a controversy between electrical contractors and engineers and various trades.

Though this case does not involve the questions presented in the case at bar, and therefore is not an authority, yet we find the statement that **a strike must involve a quitting of the service of the employer,** and in the case at bar there was no quitting of the service by the employees of the petitioner because there was no strike by them. As is disclosed by the record, **only two employees left because the Tri-City Central Trades Council had called a strike, and not because the employees either were dissatisfied or struck.**

In re Ex parte Heffron, 139 Mo., 639, the statement of the facts does not clearly demonstrate the relations of the parties in the case, but it is dis-

closed sufficiently from the decree that the case involved the acts of the employees.

In *Jones* v. *Van Winkle Gin & Machine Works,* 131 Ga., 336, it appears clearly from the statement of the case by Presiding Judge Evans that the action was against persons who were employees of the plaintiff, but who were on a strike. It is interesting to note that the opinion in this case is authority in support of the contention of petitioner, especially as applied to picketing and the manner thereof indicated in the opinion of the court in the case at bar.

Iron Moulders' Union v. *Allis-Chalmers Company, supra,* in its own facts and in the facts of the cases cited in support of that decision, is entirely inapplicable to the facts in the case at bar. The Circuit Court of Appeals wholly misapprehended the decision in that case, seemed to give no consideration to the difference in the facts and circumstances existing there, and paid no heed to the very differentiation expressed by Judge Grosscup in his separate opinion.

But even were *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* applicable to the instant case in its facts and in its conclusions, still it was not authority for the decision here, against the statutes of the State of Illinois and the law of Illinois as established by the decisions of the Supreme Court in *Barnes* v. *Typographical Union, supra,* and other cases cited.

We insist there is here involved a strict rule of property upon which the Supreme Court of Illinois has spoken; and even in equity the Federal Courts will respect and enforce the laws of

the state where either the construction and interpretation of state statutes and State Constitution are involved (and such are not in contravention to the Federal Constitution), and where a rule of property is involved.

On the bill of complaint in the case at bar an injunction was granted to protect the petitioner in its property and its right of property, amongst which is the contractual relationship between itself and its employes; its right to the lawful pursuit of its business and property, free from annoyance, interference and destruction, as was here practiced and undertaken, and also to enforce its rights under Sections 46 and 158 of Chapter 38 of the Criminal Code of the State of Illinois.

This court has sustained our contention in this respect, in *Burgess* v. *Seligman*, 107 U. S., 20, where the court said:

> "Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the state, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate, **and the construction of state constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is.** But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have

accrued thereon under a particular state of the decisions, or when there has been no decision of the state tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. **But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt.** Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State courts."

IV.

The Rule in Illinois Relating to Picketing Without Physical Violence Is Sustained in Other States and Jurisdictions.

In *Atchison, Topeka & Santa Fe v. Gee*, 139 Fed., 582, the court says, at page 584:

"But as to one phase of the case there is no denial, but practically a confession, with the alleged and boasted right to practice it. A system of 'pickets,' for more than a year, around and near by places to the shops of the company, has been kept up by all the accused and others. The pretense of this picketing is the right to converse with the new employees and persuade them to quit, and the further pretense that they desire to see who are at work. This picketing is done by details of pickets, assigned by others, they taking turn. At all hours when

men are going to and from work, morning, noon and evening, the workmen must go through and by pickets, sometimes two, four, six and more, at a place. At times the paths and walks are obstructed. At times the pickets are near by, making grimaces, and at times acting as if violence were intended, and at times uttering profanity and vulgarity. **There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity or peaceful mobbing, or lawful lynching. When men want to converse or persuade, they do not organize a picket line. When they only want to see who are at work, they go and see, and then leave and disturb no one physically or mentally. But such picketing as is displayed in the case at bar by the evidence does, and is intended to, annoy and intimidate. The argument seems to be that anything short of physical violence is lawful.** One man can be intimidated only when knocked down. But the peaceful, law-abiding man can be and is intimidated by gesticulations, by menaces, by being called harsh names, and by being followed, or compelled to pass by men known to be unfriendly. Perhaps such a man may not be a bully, but is frail in size and strength, or he may be a timid man; but such a man is just as much entitled to go and come in quiet, without even mental disturbance, as has the man afraid of no one and able with or without weapons to cope with all comers. The frail man, or the man who shuns disturbances, or the timid man, must be protected, and the company has the right to employ such."

In *Beck* v. *Railway Teamster's Protective Union*, 77 N. W., 13, the court says, at page 22:

"**It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They are intended to intimidate and coerce.** As applied to cases of this

character, the lexicographers thus define the word 'picket': 'A body of men belonging to a trades union sent to watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress.' Cent. Dict.; Webst. Dict. The word originally had no such meaning. This definition is the result of what has been done under it, and the common application that has been made of it. This is the definition the defendants put upon it in the present case. Possibly the decree is specific enough to include picketing, but we deem it our duty to place it beyond controversy."

The court in *Gompers* v. *Bucks Stove & R. Co.*, 221 U. S., 418, said:

"But the very fact that it is lawful to form these bodies (labor unions), with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve **the sacrifice of rights protected by the constitution**; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of the government to protect the one against the many, as well as the many against the one."

In *Jones et al.* v. *E. Van Winkle Gin and Machine Works*, 131 Ga., 336 (62 S. E., 237), the court says:

"Other cases similar in principle might be added, but these are sufficient to illustrate our point, which is that when strikers patrol the streets and approaches of the premises where the strike is in progress, and their number is so great, or their conduct is such, as to intimidate and coerce the employees into quitting

their employment, or others from seeking employment, they are guilty of unlawful acts, and will be enjoined from a continuance of them. Sometimes the number of strikers engaged on the patrol may be so great that those intended to be affected by the demonstration will be intimidated by the number of the strikers or their sympathizers without special overt acts. **The courts have repeatedly held that the assembling of strikers around the establishment of the employer in such numbers as will serve as a menace to those employed, or the keeping of patrols in front of or about the premises of the employer, accompanied by violence or any manner of coercion to prevent others from entering into or remaining in his service, will be enjoined.**"

Also in *Sailors Union* v. *Hammond Lumber Co.*, 156 Fed., 450 (454), the court says:

"But it is said that the injunction goes further than the law permits, in that by its language it prohibits the appellants from doing that which they have the lawful right to do. By the order of the court the appellants are enjoined 'from in any wise interfering with the crews, foremen, cooks, stewards, seamen, or either of them, or any of the servants or employees of the said steam schooners or steamship or either or any of them, without due process of law; * * * from in any wise interfering with the business of the said steam schooners and said steamship except by due process of law, with the business of complainant or orator of and concerning the said steam schooners and the said steamship; * * * and from in any wise conspiring, colluding or confederating together for the purpose of preventing the said steam schooners and steamship from receiving and discharging freight and passengers.' It is said that under this injunction

the appellants would be in contempt if they asked one of their relatives not to go as a passenger on one of the appellee's steamers, or if they made complaint of the violation of navigation laws of the appellee's vessels, or if they exercised their right to discriminate against the appellee by shipping cargo on other vessels than those of the appellee. The language of the injunction, however, is to be interpreted in the light of the allegations and prayer of the bill, and these may make an otherwise indefinite order sufficiently specific. (*Hamilton* v. *State*, 32 Md., 348.) It is the acts set forth in the bill that the appellants are enjoined from doing."

V.

Hitchman Coal & Coke Co. v. Mitchell, 245 U. S., 229, and Similar Cases Sustain Petitioner's Contentions.

The instant case comes within the decisions of this Court rendered since the decision of the Circuit Court of Appeals. The law as now established by this court clearly entitles the petitioner to retain the injunction granted by the district court in the form fixed in the final decree and unmodified in manner directed by the Circuit Court of Appeals.

The respondents not only have been guilty of violation of the statutes and the laws of the State of Illinois as above demonstrated, but have been guilty of a clear invasion of the rights and property of the petitioner, under the decisions of this court. The respondents for an illegal and unlawful purpose sought and proceeded to interfere with the contract relationship between the petitioner and its

employees. They sought to force and coerce petitioner against its will to make terms and conditions of employment contrary to the existing agreements and contracts between itself and its employees. The respondents entered into and sought to carry out a deliberate conspiracy to force the employees of petitioner, who were satisfied, contented and without complaint either as to wages or conditions of labor, to abandon their employment, to violate their contracts and thereby force the establishment of a new basis of employment between the petitioner and its employees. In this conspiracy the respondents neither represented the employees nor were they authorized to speak for the employees. They were strangers to both and gratuitous meddlers and interlopers in a situation that was tranquil and contented and in which they had no interest.

The case decisive of the instant case is *Hitchman Coal & Coke Co.* v. *Mitchell*, decided December 10, 1917, and reported in 245 U. S., 229.

In that case there was not even present the horrible state of brutality and lawlessness existing and proved in the case at bar. In that case this court holds with the District Court in the case at bar that picketing and persuasion unaccompanied by force and intimidation under the circumstances in that case as well as in the case at bar are not permissible and must be enjoined, and says:

> "Another fundamental error in defendant's position consists in the assumption that all measures that may be resorted to are lawful if they are 'peaceable'—that is, if they stop short of physical violence, or coercion through fear of

it. In our opinion, any violation of plaintiff's legal rights contrived by defendants for the purpose of inflicting damage, or having that as its necessary effect, is as plainly inhibited by the law as if it involved a breach of the peace. A combination to procure concerted breaches of contract by plaintiff's employees constitutes such a violation. *Flaccus* v. *Smith*, 199 Pa., 128; 48 Atl., 894; 54 L. R. A., 640; 85 Am. St. Rep., 779; *South Wales Miners' Federation* v. *Glamorgan Coal Co.* (1905), A. C., 239, 244, 250, 253; *Jonas Glass Co.* v. *Glass Bottle Blowers' Association*, 77 N. J. Eq., 219, 223; 79 Atl., 262; 41 L. R. A. (N. S.), 445."

In that case as well as here the court holds the employer is entitled to be protected in the enjoyment of the benefits of any lawful employment contract as against the gratuitous interference of an organization such as the respondent, Tri-City Central Trades Council, and says:

"* * * the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This court repeatedly has held that the employer is as free to make non-membership in a union a condition of employment, as the working man is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power. *Adair* v. *United States*, 208 U. S., 161, 174; 28 Sup. Ct., 277; 52 L. Ed., 436; 13 Ann. Cas., 764; *Coppage* v. *Kansas*, 236 U. S., 1, 14; 35 Sup. Ct., 240; 59 L. Ed., 441; L. R. A., 1915C, 960. In the present case, needless to say, there is no act of legislation to which defendants may resort for justification.

"Plaintiff, having in the exercise of its undoubted rights established a working agreement between it and its employes, with the free assent of the latter, is entitled to be protected in the enjoyment of the resulting status, as in any other legal right. That the employment was 'at will,' and terminable by either party at any time, is of no consequence. In *Truax* v. *Raich*, 239 U. S., 33, 38; 36 Sup. Ct., 7, 9 (60 L. Ed., 131; L. R. A., 1916D, 545; Ann. Cas. 1917 B, 283), this court ruled upon the precise question as follows:

"'It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time, for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion, and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will' (citing many cases).

"In short, plaintiff was and is entitled to the good will of its employes, precisely as a merchant is entitled to the good will of his customers although they are under no obligation to continue to deal with him. The value of the relation lies in the reasonable probability that by properly treating its employes, and paying them fair wages, and avoiding reasonable grounds of complaint, it will be able to retain them in its employ, and to fill vacancies occurring from time to time by the employment of other men on the same terms. The pecuniary value of such reasonable probabilities is incalculably great, and is recognized by the law in a variety of relations. See *Brennan* v. *United Hatters*

(cited with approval in *Truax* v. *Raich, supra*), 73 N. J. Law, 729, 749; 65 Atl., 165; 9 L. R. A. (N. S.), 254; 118 Am. St. Rep., 727; 9 Ann. Cas., 698; *Brown* v. *Honiss*, 74 N. J. Law, 501, 514; 68 Atl., 150 *et seq.*; *Jersey City Printing Co.* v. *Cassidy*, 63 N. J. Eq., 759, 767; 53 Atl., 230; *Walker* v. *Cronin*, 107 Mass., 555, 565-566; *Moran* v. *Dunphy*, 177 Mass., 485; 59 N. E., 125; 52 L. R. A., 115; 83 Am. St. Rep., 289, and cases there cited; *L. D. Willcut & Sons Co.* v. *Driscoll*, 200 Mass., 110, 117; 85 N. E., 897; 23 L. R. A. (N. S.), 1236, etc.

"The right of action for persuading an employe to leave his employer is universally recognized—nowhere more clearly than in West Virginia—and it rests upon fundamental principles of general application, not upon the English statute of laborers. *Thacker Coal Co.* v. *Burke*, 59 W. Va., 253, 255; 53 S. E., 161; 5 L. R. A. (N. S.), 1091; 8 Ann. Cas., 885, 886; *Walker* v. *Cronin*, 107 Mass., 555, 567; *Angle* v. *Chicago, St Paul, etc. Railway*, 151 U. S., 1, 13; 14 Sup. Ct., 240; 38 L. Ed., 55; *Noice Adm'x* v. *Brown*, 39 N. J. Law, 569, 572."

In that case the court holds as contended for here that the right to strike is in the employee and not in an outside organization, and that the difference in rights in that regard is fundamental. See page —:

"The case involves no question of the rights of employes. Defendants have no agency for plaintiff's employes, nor do they assert any disagreement or grievance in their behalf. In fact, there is none; but, if there were, defendants could not, without agency, set up any rights that employes might have. **The right of the latter to strike would not give to defendants the right to instigate a strike. The difference is fundamental.**"

No expression could more concretely and more aptly fit the facts and circumstances in the instant case. The respondents, as proved beyond peradventure, both by admission and by proof, were not employees of the petitioner. The Committee did not come as employees or as the representatives of employees. The employees had no disagreement or grievance, and the respondents were neither authorized nor requested to present to the petitioner a grievance that did not exist. The interference of the respondents was purely gratuitous and unwarranted.

The purpose of the respondents in the case at bar was very much like that found to have been the purpose of the defendants in the *Hitchman* case, as indicated by the following language in the opinion there:

> "To cause your orator's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until such time as your orator shall submit to the demand of the union that it shall unionize its plant, and having submitted to such demand unionize its plant by employing only union men who shall become subject to the orders of the union," etc.

and here the Tri-City Central Trades Council sought to force and coerce the petitioner into paying a different and higher wage to its employees than the contract between itself and its employees; a higher wage than the employees themselves asked for and were satisfied with; and if the change in wage was not made by the petitioner, then the employees should be prevented from working; they should be forced to break and violate their contracts with the

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petitioner; the plant of the petitioner should be shut down, and if necessary brutality and terrorism practiced against the employees and the property of the petitioner destroyed.

There are many other cases in different states and jurisdictions similar in import and conclusion as *Hitchman Coal & Coke Co.* v. *Mitchell, supra.* We call attention to some of the cases, though it would seem unnecessary to do so.

The case of *Old Dominion Steamship Company* v. *McKenna,* 30 Fed. Rep., 48, was an action at law to recover damages from the Longshoremen's Union, which interfered with the business of the steamship company. The court said (page 49):

> "I have carefully considered the elaborate arguments of counsel, and examined the numerous authorities referred to. For lack of time, I can only state my conclusions:
>
> "1. All the material averments are either stated positively, or the source of information is sufficiently indicated.
>
> "2. The facts stated in the complaint and affidavit constitute a legal cause of action against all the defendants, for the actual damages suffered, for the following reasons:
>
> "(a) The plaintiff was engaged in the legal calling of a common carrier, owning vessels, lighters, and other craft used in its business, in the employment of which numerous workmen were necessary, who, as the complaint avers, were employed 'upon terms as to wages which were just and satisfactory.'
>
> **"(b) The defendants, not being in plaintiff's employ, and without any legal justification, so far as appears—a mere dispute about wages, the merits of which are not stated, not being any legal justification—procured plaintiff's workmen in this city and in southern ports to quit**

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> work in a body, for the purpose of inflicting injury and damage upon the plaintiff until it should accede to the defendants' demands, and pay southern negroes the same wages as New York longshoremen, which the plaintiff was under no obligation to grant; and such procurement of workmen to quit work being designed to inflict injury on the plaintiff, and not being justified, constituted in law a malicious and illegal interference with the plaintiff's business, which is actionable."

United States v. *Haggerty*, 116 Fed. Rep., 510 (C. C. W. Va., 1902):

The Guaranty Trust Company of New York filed its bill against Haggerty and others, including Mary, alias Mother, Jones, some of whom are citizens and residents of the State of Pennsylvania, Illinois, Ohio and West Virginia, asking that the defendants be restrained

> "from entering and trespassing upon the lands and property of the Clarksburg Fuel Company; and to restrain them from going on or about the said company's tipples, tracks, or other property, together or individually, so long as they are not in the employment of the said company for the purpose of unlawfully preventing said company's employees in engaging and remaining in its employment; that the defendants, and each of them, be enjoined and restrained from assembling, congregating, or camping at or near the plants, mines, and places of business of the said company's property, or at or near the residences of the said employees, and the paths and roads traveled by the said employees in going to and returning from their work, for the purpose of preventing the employees of the Clarksburg Fuel Company from entering into or continuing in said company's employment by intimidation, threats, or otherwise, whether by

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physical force or otherwise, and whether by actual threats or otherwise to the person, property, or families of the said employees; that they be restrained from unlawfully interfering with the management of the business of the company; that the defendants, their confederates and their associates, be, each and all of them, enjoined from assembling together in camp or otherwise, near the mines of the company, or near the residences of its employees, whereby they would be disturbed, alarmed, or intimidated from working in the mines, and preventing them from passing to and from their houses to the mines, or from doing any personal injury to the person of the employees of the said company or others who are desirous of entering into or remaining in its employment, or interfering in any unlawful way with any person who desires to go into and remain in said company's employment, and from visiting the houses and places of abode of the persons who are in the employ of the company, who are desirous of remaining in the employment of the company, for the purpose of preventing them by threats, menaces, or actual injury to their person or their property, or to the members of their family."

The Clarksburg Fuel Company was the owner of a large number of mines and mining plants, and also owned in fee simple several thousand acres of coal lands and leased almost as many acres more. It was engaged in mining coal and manufacturing coke and shipping the same to the open market in the United States. Its production was immense and its customers resided in all parts of the United States.

There was a general strike in the anthracite regions of the State of Pennsylvania, in which a large number of persons were involved—said to be more

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than 100,000. Those at the head of the organization known as the United Mine Workers of America announced their intention to cause or create a strike among the miners of the soft coal regions of the United States, more particularly in the State of West Virginia, where the Clarksburg Fuel Company produced its coal, **not because of any grievance against the Clarksburg Company, but for the purpose of aiding the strike prevailing in the State of Pennsylvania, and to prevent the shipment of coal to localities that had been theretofore supplied with coal from the anthracite regions in the State of Pennsylvania.**

For this purpose the various defendants, including Mother Jones, who were known as "organizers," "agitators," and "walking delegates," representing the United Mine Workers of America, came into West Virginia, for the purpose of agitating strikes among the employees working for various coal companies, particularly the Clarksburg Company. To that end the defendants Haggerty and Mother Jones addressed various meetings composed in part of coal miners, and thereby attempted to inflame and excite the hatred and animosity of miners towards the proprietors of the Clarksburg Company as well as others, advised the miners to quit work, and in some instances the miners were actually assaulted by the strikers, and in another instance one of the mines belonging to the Clarksburg Company was attempted to be blown up.

All of the above had a bad effect on the employees of the Clarksburg Company, which tended to intimi-

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date those working in the mines and prevent them from continuing in their work.

The bill charged a combination and conspiracy entered into by the defendants with others to bring about a strike; that as the result of the above agitation and acts of intimidation, some of the employees of the Clarksburg Company and others were induced to strike, although most of them preferred to work and remain in the employment of the Company if they could be protected.

A temporary restraining order was entered and served upon the defendants, and the question the court has to consider in the above case is whether or not the defendants violated the court's order, and if so determine what punishment should be imposed upon them for its violation.

> "**It is to be observed that a very large portion of the miners in the employ of the Clarksburg Fuel Company do not want, in the language of one of the agitators who is enjoined, 'to lay down their picks and shovels and quit work.'** I do not question the right of the employees of this company to quit work at any time they desire to do so, unless there is a contractual relation between them and the employer which should control their right to quit. At the same time I do not recognize the right of an employer to coerce the employees to continue their work when they desire to quit. But can it be said that where a conspiracy exists to control the employees, as in this instance, either by threats, intimidations, or a resort to any other modes usually accompanying the action of strikers, that such action upon their part is not only illegal, but a malicious and illegal interference with the employer's business? The question is its best answer. **While I recognize**

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the right for all laborers to combine for the purpose of protecting all their lawful rights, I do not recognize the right of laborers to conspire together to compel employees who are not dissatisfied with their work in the mines to lay down their picks and shovels and to quit their work, without a just or proper reason therefor, merely to gratify a professional set of 'agitators, organizers, and walking delegates,' who roam all over the country as agents for some combination, who are vampires that live and fatten on the honest labor of the coal miners of the country, and who are busybodies creating dissatisfaction amongst a class of people who are quiet, well-disposed, and who do not want to be disturbed by the unceasing agitation of this class of people. In the case we have under consideration these defendants are known as professional agitators, organizers, and walking delegates. They have nothing in common with the people who are employed in the mines of the Clarksburg Fuel Company. The evidence in this case shows that their only object and purpose is to get the people who are in the employment of the Clarksburg Fuel Company to go out upon a strike, as it is termed, for the purpose of compelling the owners of the mines to advance an increase in their wages. It discloses that the miners in the Pinnickkinnick mines are making an average of $4 a day in excess of their legitimate expenses, many of whom have worked in foreign countries for less than a half a dollar a day. The defendants in this case are not laborers in the mines, and have no connection with them whatever. Their mission here is to foment trouble, create dissatisfaction among the employees in coal mines, producing strikes, which tends greatly to damage and injure the business of the employers. In this case there is no dissatisfaction among the large number of the miners. **Only a small part of them have quit the mines from fear of intimidation, threats,**

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and violence, but those remaining in the mines say they will quit work unless they are protected against the threats of these agitators and organizers. The strong arm of the court of equity is invoked in this case, not to suppress the right of free speech, but to restrain and inhibit these defendants, whose only purpose is to bring about strikes, by trying to coerce people who are not dissatisfied with the terms of their employment, which results in inflicting injury and damage to their employers, as well as the employees.

"It is apparent that, if these agitators are permitted to interfere with the orderly, well-disposed miners who are anxious to work, and contented with the wages they receive, in the end this contented class of miners would, through fear, intimidation, as well as threats, be induced to throw down their shovels and picks, and cease to work in the mines, whereby the Clarksburg Fuel Company would be greatly damaged. Not only would it be greatly damaged, but it would be prevented from fulfilling its contracts for the future delivery of the product of its mines. The right of a citizen to labor for wages that he is satisfied with is a right protected by law, and is entitled to the same protection as free speech, and should be better protected than the abuse of free speech, in which the organizers and agitators indulge in trying to produce strikes."

Casey v. *Cincinnati Typographical Union No. 3*, 45 Fed. Rep., 135 (C. C. Ohio, 1891):

Casey was the proprietor and publisher of the Commonwealth, a daily and weekly newspaper published at Covington, Kentucky. He filed his bill to restrain the defendant, which is a corporation organized as a trades union or labor organization, composed of type-setters and printers, and certain

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individual defendants are the officers and managing agents of said Typographical Union from boycotting the complainant and his newspaper.

The defendant, Typographical Union, demanded that complainant unionize his office, that is to say, publish and conduct his paper according to the dictates of the Typographical Union, not only as to method of publication, but wages to be paid his employees, and employ only such persons that met the approval of the Typographical Union, and discharge certain persons then in complainant's employ.

The complainant refused to comply with said demands, whereupon the defendants all conspired to and did put into execution a very successful boycott of complainant's paper, the various details of which were elaborately set forth in complainant's bill of complaint. The demands of the defendant, Typographical Union, which, if complied with, would have necessitated the discharge of every printer employed by the complainant and the substitution therefor of persons wholly within the control of the Typographical Union. **There was no trouble between the complainant and his employees. Each was satisfied with the relationships existing between them. There had been no complaint upon the part of the complainant's employees. The complaint came solely from other persons not having any financial interest in the affairs of the papers, none of whose members had any right to expect employment by the complainant.**

The court's opinion was rendered upon a motion for a temporary injunction and is one that is cited favorably in many subsequent authorities. The por-

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tion of the court's opinion, however, to which we invite this court's attention is found at page 146 of the report and consists principally of the approval of an opinion of Judge Carpenter of the Supreme Court of Connecticut in the case of *State* v. *Glidden,* as reported in 8 Atl. Rep., 890.

Judge Sage said:

> "In *State* v. *Glidden,* cited hereinbefore, Judge Carpenter, speaking for the Supreme Court of Connecticut, states that the defendants said in effect to the publishing company:
>
> " 'You shall discharge men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true, we have no interest in your business; we have no capital invested therein; we are in nowise responsible for its losses or failure; we are not directly benefited by its success; and we do not participate in its profits—yet we have a right to control its management, and compel you to submit to our dictation.'
>
> "The court said that the bare assertion of such a right was startling; that, if it existed, all business enterprises were alike subject to the dictation and control of those who asserted it, and upon the same principle and for the same reason the right to determine what business men shall engage in, and when and where and how it shall be carried on, will be demanded, and must be conceded to associations of workingmen of the class of those whom it would be necessary to employ. The opinion in this case, although the case itself arose upon an indictment for conspiracy, is a well-considered discussion of the law with relation to boycotting. See, also, *Steamship Co.* v. *McKenna,* 30 Fed. Rep., 48."

State v. *Glidden et al.,* 8 Atl. Rep., 890 (Conn., 1887):

The defendants had been found guilty of a crimi-

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nal conspiracy, the object of which was (1) to compel the Carrington Publishing Company, against its will, to discharge its workmen, and to employ such persons as the defendants and their associates should name; and (2) to injure and oppress the workmen then in the employ of said corporation, by depriving them of their said employment by first demanding the discharge of said employees, and upon such demand being refused, boycotting the Publishing Company.

Judge Carpenter, speaking for the Supreme Court of Connecticut, expressed the views of the court, as follows:

> "Now, if we look at this transaction as it appears on the face of this information, we shall be satisfied that the defendants' purpose was to deprive the Carrington Publishing Company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendant. The motion was a selfish one—to gain an advantage unjustly, and at the expense of others—and therefore the act was legally corrupt. As a means of accomplishing the purpose, the parties intended to harm the Carrington Publishing Company, and therefore it was malicious. * * * * * * * *
>
> "The two alleged rights cannot possibly co-exist. One or the other must yield. If the defendants have the right which they claim, then all business enterprises are alike subject to their dictation. No one is safe in engaging in business, for no one knows whether his business affairs are to be dictated by intelligence or ignorance—whether law and justice will protect the business, or brute force, regardless of law, will control it; for it must be remembered that the exercise of the power, if conceded, will by no means be con-

fined to the matter of employing help. Upon the same principle, and for the same reasons, the right to determine what business others shall engage in, when and where it shall be carried on, etc., will be demanded, and must be conceded. The principle, if it once obtains a foothold, is aggressive, and is not easily checked. It thrives on what it feeds, and is insatiate in its demands. More requires more. If a large body of irresponsible men demand and receive power outside of law, over and above law, it is not to be expected that they will be satisfied with a moderate and reasonable use of it."

Jersey City Printing Co. v. *Cassidy,* 53 Atl. Rep., 230 (N. J., 1902):

The Jersey City Printing Company filed its bill asking for an injunction against Cassidy and others.

Vice-Chancellor Stevenson in his oral opinion concedes that an employer has a right to arbitrarily "dictate" to his employees in regard to matters in respect of which their conduct ought, according to correct social and ethical principles, to be left entirely free. Likewise employees with certain limitations may dictate how their employer shall conduct his business, so long as the dictation of either is backed up only by a threat of an association of the relations of employer and employee, hence, he holds that employees may inform their employer that unless he does certain things to their liking they will "strike."

At page 232 of the report the court says:

"But the difficult case presents itself when the workmen in combination undertake to interfere with the freedom of action on the part of other workmen who naturally would seek employment where they, the workmen in combina-

tion, desire and intend that no man shall be employed excepting upon their terms. The difficulty is in perceiving how molestation and annoyance, not of the employees of a complainant, but of persons who are merely looking for work, and may become employees of the complainant, can be erected into a legal or equitable grievance on the part of the complainant. But the difficulty is still further increased where the possible employees make no complaint to any court for protection, and the conduct of the molesting party does not afford a basis which the ancient common law recognized as sufficient to support an action of tort on their behalf, such as for an assault and battery, or a slander. Abusive language is not necessarily actionable at common law. If to call a man a 'scab' in the street, or to follow him back and forth from his home to his place of employment, was formerly not actionable on behalf of the victim of this petty annoyance, the problem is to understand how one who is merely the victim's possible employer can complain either at law or in equity; there being no actual contract for service, but only a potential one, interfered with."

Again at 234 of the report the court says:

"I think it is safe to say that, all through this development of strike law during the last decade, no principle becomes established which does not operate equaliy upon both employer and employee. The rights of both classes are absolutely equal in respect of all these 'probable expectancies.' An operater upon printing machines has the right to offer his labor freely to any of the printing shops in Jersey City. These shops may all combine to refuse to employ him on account of his race, or membership in a labor union, or for any other reason, or for no reason, precisely as twenty employees in one printing shop may combine, and arbitrarily refuse to be further employed unless

the business is conducted in accordance with their views. But, in the case of the operative seeking employment, he has a right to have the action of the masters of the printing shops in reference to employing him left absolutely free. **If, after obtaining or seeking to obtain employment in a shop, the master of that shop should be subjected to annoyances and molestation instigated by the proprietors of other printing shops, who combine to compel, by such molestation and annoyance, this one master printer, against his will and wish, to exclude the operative from employment, this operative, in my judgment, would have a right to an action at law for damages, and would have a right to an injunction if his case presented the other ordinary conditions upon which injunctions issue.''**

Frank v. *Herold*, 63 N. J. Eq., 443; 52 Atl., 152, 1901:

A bill was filed against upwards of eighty defendants, asking an injunction to protect the complainants from an alleged conspiracy among the defendants to prevent certain operatives of the complainants from continuing to work for them.

From the statement of facts and opinion of the court the facts do not clearly appear. There is no doubt, however, that the complainant was the owner of what is known as the "Greater Barnert Mill," in Paterson, New Jersey, and the defendants were endeavoring to persuade various women employees from continuing in the employ of complainant.

The court says:

"The right of a master to have a servant continue in his employ without molestation or enticement by any third party is a property right, so recognized by the law, and well within the rule laid down by Vice-Chancellor Green in Barr v. Essex Trades Council, where he shows that

the right of a man to carry on his business is a property right."

Charles L. Flaccus v. *W. J. Smith et al.*, 199 Pa., 128:

This was a case in which the facts very closely resemble the facts in *Hitchman Coal & Coke Co.* v. *Mitchell, supra.* It involved an effort by the American Flint Glass Workers' Union, affiliated with the American Federation of Labor, to compel and induce the complainant's employees to break their covenants or agreements not to become members of the union or connect themselves with the same, with the object of breaking down complainant's factory as a non-union factory either by preventing the operation of complainant's works or compel joining the union. The court says:

"**This is not a controversy between the employer and his employees, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor, and seeking to induce the apprentices of the employer to violate the terms of their indentures with him.** No question is here raised by the employer as to what his employees may or may not do, and the complaint sets forth no misconduct by them for which relief is asked. The appellants, outsiders, having no connection with the business of the appellee, are charged with enticing and endeavoring to entice the young men employed by him to violate the covenants of their apprenticeships with him, and protection is prayed for against the threatened ruin of his business, as found by the court below.

* * * * * * *

"The appellee had an unquestioned right, in the conduct of his business, to employ workmen who were independent of any labor union, and

he had the further right to adopt a system of apprenticeship which excluded his apprentices from membership in such a union. He was responsible to no one for his reasons in adopting such a system. and no one had a right to interfere with it to his prejudice or injury. Such an interference with it was an interference with his business, and, if unlawful, cannot be permitted. The court found that the interference was injurious to him, and, if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity."

VI.

Brutality and Bludgeon the Form of Picketing and Persuasion Practiced by Respondents.

In this case the conduct of the respondents' conspirators was so violent in its lawlessness, so brutal in its practice, that it comes within the class of cases requiring and justifying injunction because of the resort to intimidation, physical force and destruction. That the opinion and decision of the Circuit Court of Appeals should not in any happenstance fashion mislead this court into the thought or idea that this case involves interference and restraint only by peaceful picketing and peaceful persuasion, and to demonstrate to this court that a modification of the injunction such as was decreed by the Circuit Court of Appeals, not only is unjustified from the facts and proof in the case, but if adhered to, **would encourage and assure an immediate resumption of the force and violence practiced when**

interrupted by the restraining order of the District Court, we bring to the attention of this court the evidence of brutality and thuggery which forced resort to the courts for protection.

As before adverted, the Circuit Court of Appeals in a rather colorless fashion did find that there was justification for the injunction against intimidation and force. Let us see what the evidence in the record is in support of the findings of the District Judge and in proof of the respondents' resort to the bludgeon as a means of peaceful persuasion and peaceful picketing.

A. Walcher testified as follows:

> "As works manager threats had been carried to me by third persons from the pickets to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end. * * * (Printed Rec., 24.)
>
> "Other men besides the defendants were engaged in picket duty around the plant. These pickets would stand around in groups of eight or ten, two and three groups. Some of these I recognized as machinists, others as workmen that had worked around Granite City at various times, various outsiders." (Printed Rec., 26.)

Steven Hafner testified as follows:

> "* * * On April the 30th as I came to work to the plant I go down on Neideringhaus avenue along side of the Wabash station. I saw Churchill, Gerlich, and Cook on Neideringhaus avenue that day. They was out on the walk about ten feet away from the track from the station there and jumped in front of me. They didn't say nothing, only Tom Churchill say, 'You can't go this way.' And I said, 'Yes, I can.' And he jumped on me and beat me up; I

didn't see the two fellows coming behind; Tom Churchill jumped in front of me and stopped me and I didn't see the other two men come at all, and all at once I got hit in the face and all over, and then I went over to the cars; I couldn't hardly stand and braced up in a car; the time I was going over to the cars one fellow his name is McKenny he was going to get after me again and I said I wouldn't go into the plant; I was going back home; I was going to brace up over in the cars. I went home; couldn't go into the shop any more. I was feeling awfully dizzy all day long; still dizzy yet sometime on account of them hitting me. * * * (Printed Rec., 26.)

"Churchill, McKenny and Cook all hit me, they knocked me down. They hit me in the face; I don't know where they did hit me; couldn't see fast enough how they did come on me, then I went between the cars and braced up a little and then I went back home." (Printed Rec., 27.)

Frank Hedstrum testified as follows:

"* * * On May 8th I saw them on Niedringhaus avenue by the Wabash depot. A bunch of about fifteen or twenty of them came in the direction of four or five of us calling us vulgar names and we went on past the depot on the left hand side of the shop on Niedringhaus avenue. The men at the depot followed us and commenced assaulting us. One of them hit me on the hand with a rock. As a result I was in a dazed condition and had to have a doctor care for my hand. On May 18 Ira Crawford and myself were walking to work about five o'clock in the evening.

"We were coming down the street when we were intercepted by some men at the corner of 21st and B streets, about 4½ blocks from the plant. There were about twenty-five men in the bunch. Some man whose name I do not know said, 'Don't go in to work.' And the next thing

I remember I found myself getting up and nobody around, except some school children and Crawford. Crawford was getting up from the ground where he was knocked unconscious as well as myself, and this gang of twenty-five men were all gone. I was rendered unconscious by being struck over the head with some blunt instrument. The right side of my face was swollen from being hit with something on the jaw, it was all swollen and sore down to my collar bone. My head was swelled and sore also; there was a knot about the size of a pigeon egg on the side of my head.

"On the morning of May 14 I saw Ted Ishman close to the Wabash depot, he said to me that we would continue going in to work until we got our heads knocked off." (Printed Rec., 27.)

Ira Crawford testified as follows:

"I have been working for the American Steel Foundries about six or seven weeks, running a crane on the night shift. On the morning of May the 8th, as I was coming from work I saw a bunch of about twenty men near the Wabash depot. I recognized Ishman and Dangles in the crowd. The crowd followed us around the depot calling us vile names and the next thing I knew there was a fight come off. They hit us, struck me in the back with something and on the arm, and struck at me at different times.

"On May 18 I left the house about a quarter to five o'clock with Hedstrum. The only man that I recognized in that crowd was Dangles. They jumped on to us and beat me up with a club of some kind; hit me on the head; hit me on the back with a brick and I don't know what else. I was knocked unconscious and my head cut open. I don't think I was unconscious long. When I came to I saw men running near C. street towards town. As a result of this assault I couldn't work for two weeks and was treated

by a doctor. My face was cut and my head cut and bruised. My left arm was so I couldn't use it and it still bothers me." (Printed Rec., 28.)

W. C. Quinn testified as follows:

"* * * When I finished my day's work on night of May the 13th I and eight others left the plant about eight minutes to six and walked out Neideringhaus avenue across the track and past the depot. We passed Ted Ishman and Galloway at the depot with four or five other fellows, and they said, 'There they go,' and at the same time Galloway drops his hand and we walked up the street. We walked up the street two or three hundred feet and a gang of men about sixty-five or seventy of them came around the corner from behind a brick pile. From the other side of the street was about a likewise number; at the head of the bunch on this side of the street was Hartbeck, and just as we got from about twenty feet from the street car track this fellow hit Kelly in the face and at the same time he says, 'There, you scabbing s— of b—; don't let him get away from you;' and I tried to cut across the field and they shillalahed me with bricks and likewise the rest of them. The bunch that was at the station came from behind. I was struck by these brick bats in too numerous places to mention. I was struck mainly on the back and on the side of the left temple, and on the right jaw, also on the arms. I was knocked unconscious for about fifteen or twenty minutes and when I regained consciousness all of these men had disappeared. As a result of this I couldn't perform my duties for the next week and have had a continuous headache ever since. I was never troubled with headaches before.

"On May the 6th I saw Ted Ishman on the corner of Eighteenth street and he told me if we continued to work down there we would get

hurt. He said there wouldn't be any of us go in there the following Monday if they had to kill us all. I started sleeping in the plant on the night of the 14th and have slept there up until last Monday. I slept on a board the first couple of nights and then on a cot. I slept in the plant because I didn't like to battle my way through all the time. I was followed continually across the river and on this side of the river, too. On one occasion I was followed by a man whose name I do not know and I caught six different street cars trying to escape and finally I caught a taxicab and got away from him. On the following day I met this same fellow and two others on the corner of Fifteenth and Chestnut streets in St. Louis. This fellow came in front of me and two fellows behind me and just as he got to me he said, 'This is the scabbing b—d,' and struck at me, and the two fellows from behind rushed up at me and I had to defend myself and I knocked one man down and got the other fellow down, and the other fellow ran." (Printed Rec., 29.)

Frank Melton testified as follows:

"I went to work for the complainant on April the 13th, worked about ten days and was off then until the 7th of May when I again went to work. That day I went across Niedringhause avenue on the south side of the plant to Compton's Restaurant; while I was in there this fellow here (pointing out defendant Gerlich in the court room) come up to me. He was the leader of these fellows. Guess there were twenty of them in there while I was eating dinner and they surrounded me. He came up and commenced to bulldoze me, and said, 'Say you, don't you know there is a strike on here?' He told me if I didn't stay out of that shop they would beat my damned head off and I sat and eat awhile, and I told them I thought I would quit that night beings they were getting so strong with it, and

they kept getting louder all the time and getting closer to me all the time. When I told him I would quit that night, he said, 'You won't do it no such a damn thing; you have seen your last time in that shop. You are quitting right now.' There was a heat to come down in a few minutes; they had me tied up and wouldn't let me in; I was pouring man. I told them I had a motorcycle in the shop and would have to get that out, so they gave me fifteen minutes to get out of there, and on account of their threatening attitude I was afraid to go back there to work. I went to work and worked one day after that and that night they jumped me in East St. Louis right near my home. I don't know who jumped me. One of them said, 'There is that crane man at Granite City.' One threw a brick but never hit me, and one ran over and knocked me down; don't know who it was, a hammer or something he had in his hand; hit me in the back and knocked me down; I was laid up for over a week; couldn't use my back, and struck me in the face and I was cut on the arm. This happened about the 14th of May. I don't know who struck me, it was done after dark and I couldn't very well recognize who it was.

"I was satisfied with the terms of my employment and I am willing to work there, but I am afraid to work." (Printed Rec., 30.)

William Francis testified as follows:

"* * * When I left the plant on the night of April 29th I saw Tom Churchill about eight feet from the depot with ten or twelve other men; among them was Wm. and C. Thornberg. They were all in the gang together. Churchill said, 'If we didn't stay out in a decent manner they would make us stay out.'

"On the following morning I went to work with Steven Hafner. We met Thornberg and Churchill and they took Steve away from me

and kicked him and beat him in the face with their fists and feet, they then ran away.

"I saw the Blacksmith Freddy that morning. I saw him get whipped; knocked down. He come on the north side of the depot and Churchill, the two Thornbergs and three or four other fellows were on the south side. They headed him off around the car and they commenced whipping him and knock him down and beat him. There were about nine or ten of them in the assault. Freddy was unable to work and went home.

"On the 13th of May there was trouble on Neideringhaus avenue about a half a block from the plant. There were nine men with me and I seen a world of men coming three directions. Some from behind the stamping works, south of the stamping works; some was coming north and when we passed by a gang at the depot we were in the middle of the three gangs. They commenced throwing bricks. I recognized two or three standing around there. Bricks was being thrown so fast I got behind a post. As I was going by the depot I recognized two or three of them. I recognized Churchill, Hartbeck and Galloway. Galloway was at the depot. A bunch of these men came in from behind us after we got past the depot. I saw workmen with me that were struck with bricks. A man got knocked down with a brick; one got hit in the ear with a brick. Mr. Quinn got knocked flat down unconscious. Mr. Patty over there got knocked down. It lasted about ten or fifteen minutes and then the gang run away in different directions. I got behind a post and didn't get a scratch.

"Freddy was about eighty or ninety feet from the works when he was assaulted. Churchill and McKenny assaulted him. I don't know what Freddy said. I was about twenty feet from them. They did not molest me. Freddy didn't strike them.

"Churchill and Hartbeck was in the fight on May the 13th. Don't know how many men were there; there was a world of them. I saw this the two fellows before the big crowd come up there, but the other gangs hadn't met us. And the crowd at the depot came up behind." (Printed Rec., 31.)

J. E. Bell testified as follows:

"I am working for the Steel Foundries as a crane man. I was working there on the 13th of May. On leaving our work eight or nine of the workmen went up Niedringhaus avenue together. A bunch of men came from behind the stamping works, one came back of us and one from the side; kind of corralled us, threw bricks and everything at us. I was struck in the back and arms with bricks. About the 8th or 9th of May I had a talk with McKenny. He told us if we didn't quit working they would cripple us so that we couldn't get there the next Monday morning. I have been satisfied with the terms of my employment there at the plant." (Printed Rec., 32.)

Edwin Baker testified as follows:

"I run the Royal Hotel in Granite City. I draw my trade mostly from the working people, and some of the employees of the complainant board with me. I know who the colored porter is that works for the complainant, he comes to my place for meals. On May 9th he came to my hotel with an order for two meals from officials at the complainant's plant. I packed them in two baskets and a bucket of coffee and handed them to him. He left my place and in about fifteen minutes came back as hard as he could run; ran in the restaurant and through kitchen where I happened to be. He did not have the baskets with him at that time.

"About three minutes after the porter got there three men came into the place. I didn't know any of them; the spokesman said his name was Harris. He asked me if I was feeding men from the American Steel Foundries. I told him that I was and they told me if I didn't quit feeding them they would ruin my business and see that I didn't get any more union men." (Printed Rec., 33.)

O. P. Floyd testified as follows:

"I know the colored man, the porter at the plant. I sent him to this hotel to get those meals. I saw him coming back to the plant. As he was on the tracks coming to the plant he had the two breakfasts I sent him for in a couple of ordinary market baskets. At this point he was stopped by Churchill, Gerlich and two other men whose names I do not know. They forcibly jerked the baskets away from him and threw them on the tracks and kicked the contents of the baskets over the tracks and broke up the dishes and the negro went back the other way. He didn't come to the plant at all." (Printed Rec., 34.)

Valley Crabtree testified as follows:

"I have worked for the complainant continuously since March 29th. On May 8th I left my work about 7:15 in the morning to go home; Hedstrum and Crawford, fellow employees, were with me. As we were going on Niedringhaus avenue near the depot I met a bunch of about fifteen assaulters. I only knew Ishman and Warden in the bunch. They come up in front of us and called us vile names; whether they were addressed to me or not I don't know; never had anything said to me before. They followed us in around the depot and the next I knew Mr. Ishman and another fellow struck me with their fists. The fight started and lasted just a few

seconds and the policemen came along and arrested us three employees, Mr. Ishman and another gentleman.

"I had no other trouble. I am a furnace helper in the plant and satisfied with my employment there." (Printed Rec., 35.)

Thos. Cantrell testified as follows:

"I am working for the complainant, starting there May the 13th. I left the plant that night about 6:10 o'clock, and when I got down about a half a square from the Wabash Depot it seemed to me there were about two hundred men surrounded us. I recognized one man, Ted Ishman. I saw him throw a brick and strike Mr. Stark with it. Stark was covered with blood; I took him across the street and met four other guys, but I can't identify them; they started hurling bricks at me; some hit me on the back and I made my get-away towards the plant. I stayed in the plant until about 8 o'clock and then four officers escorted us to the Royal Hotel. I went back to work and the next morning and for five or six days slept in the plant. I slept on tables until they got cots." (Printed Rec., 35.)

Adolphus Hileman testified as follows:

"I started to work for the complainant along the first part of April and quit working April 25. On the evening of April the 24th I saw quite a crowd; Lamb and Ishman was with them. They asked me to stay out, that there was a strike on there; I told them I would go in and pour the heats and then come out, and a fellow said, 'Go on in and scab then and we will catch you when you come out.' On the evening of April 24 I was met by Ishman, Holmes and Paddey about six blocks from the plant. They said the machinists called a meeting and decided to get everybody that went in there and knock their blocks off and I had better stay out.

Paddey said the machinists would do that; they didn't say they would do it. On April 25 I saw Horace Howard and Harry McKenny. I was on the inside of the fence talking to them through the fence. When I first saw them I was sitting on the water tank by the fence about forty feet from the gate. They told me I didn't do the right thing by staying in there and scabbing; I ought to come out. I quit working there that day because they made those threats and I didn't care to be in the trouble if there was any trouble. I was satisfied with my employment, satisfied with the terms of it and had no trouble with the company at all." (Printed Rec., 37.)

Arthur Gordon testified as follows:

"I am working as a craneman for the complainant; started to work on May 6th. On the evening of May 13th as I left my work I saw some of the pickets at the Wabash Depot, and when I got a little closer they started to follow behind us, and some coming up the same side of the street to meet us, and some coming from behind the stamping works, I got knocked down to the ground and they started to kick me with their boots. I don't know what I was knocked down with; it was from behind. There was a pile of bricks there. I was kicked in the forehead; on my head; had my ribs black and blue and bandaged up for about two weeks. I went to the surgeon of the plant and he bandaged my ribs. I had a big lump on my forehead. I was pretty sore; couldn't hardly breathe at all and was affected for nearly three weeks. After I was assaulted I made for the street car and got on it; they threw a pile of rocks; they didn't hit me, but hit the street car. I don't know any of the names of the men in the bunch.

"Before this I had been talked to by Ted Ishman; he stopped me and told me if I didn't quit going in there they would put me out of commission. I told them I was going to work

anyhow, and he said there would be none of us in the plant on Monday. I slept in the plant at nights for about a week. The first two nights I slept on a plank; after that on a cot." (Printed Rec., 38.)

Oscar E. Hall testified as follows:

"I am master mechanic at the plant of the complainant and have been since May the 1st, 1913. * * *

"About the 24th or 25th of April I had a conversation with the defendant Lamb. He said to me, 'We don't like the way you have treated our boys down here and we just come down to raise a little hell.' Just before he said this he was with a party of five or six men.

"Question by the Court: If men were unmolested would you have any trouble filling all the places you want? A. I think not.

"Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none." * * * (Printed Rec., 39.)

Charles Fortner testified as follows:

"I am working in Alton, but on April 14 worked for the complainant, worked there from April the 6th until April the 25th. I know Holmes, Ishman and Lamb; on the evening of April 23, as I was going home, I met them about one hundred fifty feet from the plant. They asked me if I knew there was a strike on and I told them I did not; they told me there was and the best thing was to keep out of there and if I didn't they would make me. Later on I got word if I didn't cease work I would get my head beat off. I quit work on the 25th of April because I was afraid they would carry their threats into execution and beat my head off, and didn't want to get into trouble one way or the other." (Printed Rec., 42.)

Fred Stark testified as follows:

"I applied for work at the complainant's plant about four o'clock in the afternoon of May the 13th and started to work on the 14th. As I was leaving the plant about six o'clock on the evening of the 13th I went straight over the tracks to the Wabash depot, turned there and went up that street and started toward the street car; got half way up between the depot and the street car and was surrounded by about two hundred men and somebody got behind me and hit me in the ear with a rock. It busted my ear. I feel the effects at the present time and I believe it is broke. After I was hit I started down the street back of the plant. I didn't know anybody in the crowd only by having them pointed out to me. That red-headed man back there in the courtroom I saw there. I don't know his name. He tried to stop me down by the depot as I was coming back. I pulled out my pocket knife and he jumped aside. I left the plant that night between eight and nine o'clock and came back the next morning at four. The regular time to go to work was seven o'clock. After that night I slept in the plant on a pattern table." (Printed Rec., 42.)

Harry McKenny testified as follows:

"I live in Granite City and am a steamfitter and belong to one of these unions. * * *

"Yes, sir, I assaulted one of the fellows there. Churchill stopped him one morning and was talking to him and I come up and asked him where he was working and he said he was going in there to work; I told him to stay away, and he said, 'You G—d d—n son of b——, I will work where I please,' and I hit him. We were standing at the south end of the depot; me, Churchill and some other fellow. I never tried to stop anybody from going into the plant by force. I never assaulted nobody. I talked to them; tried to talk to them in a good way." (Printed Rec., 51.)

VII.

Injunction As Decreed by District Court Should Stand.

When a conspiracy and a combination are entered upon to do an unlawful act, the presumption is, the methods employed for its accomplishment will be correspondingly unlawful. When, as in the case at bar, the methods for the accomplishment of unlawful combination and conspiracy are illegal and lawless (as proved by the evidence and judicially found by both the District Court and by the Circuit Court of Appeals), it is a fair presumption that similar unlawful and illegal methods will be continued, unless restrained, and will be resumed if the restraint should be released. The decree permanently enjoining such lawlessness and the further execution of an unlawful combination and conspiracy should not be left to particularity of language or fine distinction of expression, but should be general and as comprehensive as possible to make certain, the efficacy of injunction and restraint. Such was the decree as entered by the District Court in this case. (*Sailors Union* v. *Hammond Lumber Co., supra.*) The modification directed by the Circuit Court of Appeals, if its affirmance is conceivable, will be an invitation to the respondents to renew and continue their lawless methods for carrying out their unlawful conspiracy and combination, and when haled into court in proper proceedings for contempt, to seek exemption from punishment by casting doubt upon the proper interpretation of the

terms "lawful" and "picketing," and as said in *Barnes* v. *Typographical Union, supra,* "would leave such question to the individual notions or bias of the particular judge." Judge Humphrey, who decided the case, having died, petitioner would lose the benefit of the knowledge and information which came to that Judge in his judicial capacity and which naturally and properly would be considered in the deliberations on any contempt proceeding instituted to punish a violation of an injunction in the modified form as proposed by the Circuit Court of Appeals.

In the light of the evidence of brutality and lawlessness in this case, any modification, it seems to us, would be most unfortunate and most serious for both the petitioner and its employees. It would give an encouragement to interfering organizations having no relation to the employer, and, as in the case at bar, made up of barbers and barkeepers, and clerks and workmen in various trades not related in any way to the business or enterprise of the petitioner, wherever resident, in Illinois or out of Illinois, to interfere with the business, property and operations of the petitioner and of its employees.

If the practice and proceedings of the respondents in this case are sustained by affirmance of the decision of the Circuit Court of Appeals, then property and business are indeed insecure; both the employer and employee are in a position of helplessness and terrorism, and the vital interests of industry and of business and of capital and of labor as well, seriously menaced.

We respectfully submit that the decree of the Circuit Court of Appeals modifying the injunction of the District Court be reversed and the final decree of the District Court be affirmed.

Max Pam

Harry Boyd Hunt

Wm. E. Wheeler

Solicitors for Petitioner.

Max Pam,
Of Counsel.

APPENDIX.

Judge Humphrey's Opinion.

The law is very well settled, I think so well settled that there can be no dispute with the court or between counsel, as to the rights of the parties. It is not a new question; not so old in this country as in Europe, but still it is not a new question even in this country.

Men have a right to combine their capital and create artificial bodies for the carrying on a great works, works so great no one man could do it. That is a combination. The law recognizes it. It is legal. The progress of the world has been marked more among the nations which permit this combination than anywhere else in the world.

In order to carry on these great works, something besides capital is necessary. Something more important than capital; something more human than capital; something that touches the people more tenderly than capital. That is labor. So the law provides, wisely provides, that a man who has labor to sell may combine with his fellows for the purpose of helping his own condition, or getting more for the commodity which he brings to the public service than he would if he were not organized, and that brings us near to the point of conflict. The manufacturer, the corporation, has work to do. It offers a price, the price which in its judgment the market would justify. The man or men who have the labor to sell try to meet that price.

They cannot do it always. They say we will exercise the privilege, which the law gives us, to refuse to work for you. A and B join with C, D, E and F, and they have a right to do that and say they won't work for you individually, or in a body. Now that is a lawful right, but the very statement of that right contemplates that any other man, or any other body of men, organized or unorganized, has a right to sell his or their labor at the price offered if he wants to.

Now you see how absurd it would be to affirm one of these doctrines and disaffirm the other. The very basis of law on which the labor union exists contemplates that the man who does not belong to the labor union has the same right to exercise his own judgment as to the price at which he will sell his labor. When you consider all these things, the man's home necessities, the man's wants, the size of his family, his condition in life, whether or not he has a nest egg laid away, whether or not he has a bank account, is the controlling feature with him. One man moves from one motive and refuses; another man moves from another motive and says, "Yes, I will work at the price you offer; the wages are satisfactory and the conditions are satisfactory." Then we are up to the time when the law is called upon to decide whether the man or the group which refused to work shall say that the man who wants to work shall not work. You see what an absurdity it would be to affirm that doctrine.

This bill is brought upon a theory different from most of the bills in the books. This bill charges a

combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trades of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests, viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no

other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We wouldn't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law, and there is no other view to take of it. This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it. When the company several months later undertook to run on a different scale of wages they contracted with certain men, who did not belong to the union, to work for them. These men have said upon the stand they were willing to work; the wages were satisfactory; the conditions were satisfactory, but that they didn't work because they were afraid of the defendants.

Now a man who doesn't want to work at a certain wage has a right to withdraw; another man who does want to work under those conditions and for those wages has an equal right to work without being interrupted, and the first man shall not interfere with the second.

Work is the condition of us all. No man is of any account in this world without it; no matter what character the work may be. We are all workers or we are no good. Every man must judge for himself as to the contract of labor which is satisfactory to him. He may work, or he may decline to work, but he shall not interfere with his neighbor who desires to work, for the Government will protect such neighbor and a government that will not protect such a man isn't fit to live, and, in my judgment, will not permanently endure.

The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be violent or peaceful.

However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the condition under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an

unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get to him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law, and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There could be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you.

Counsel for complainant may prepare an order finding the averments of the bill sustained and extending the injunction, making the restraining order an injunction against the union, its officers and all other persons who have had any part, as shown by the evidence, in the execution of the unlawful combination.

The injunction may go this much further; it may prohibit absolutely picketing for the purpose of executing this unlawful purpose. It may extend also to all persons who shall engage in helping or abetting the unlawful combination, whether the knowledge came to them before or after the issuing of this injunction. Let the injunction be printed and posted liberally in the vicinity of the works.

Perhaps I ought to say to you gentlemen who are the officers of the defendant union, that the court regards it as your duty to explain to those who are not here and to those who are here, if necessary, just what the purpose of this order is, and that it is their duty to obey it, for the court will find some means of enforcing its order.

Circuit Court of Appeals Opinion.

Before Mack, Alschuler and Evans, Circuit Judges.

Appellants, herein called defendants, appeal from the final decree entered in favor of appellee, herein called plaintiff, enjoining defendants as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents, and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any per-

son by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

Plaintiff instituted this suit to prevent alleged threatened injury to its business and threatened destruction of its manufacturing plant, located at Granite City, Illinois, claimed to be worth $1,000,000, which it alleges the Tri-City Trades Council, a labor organization and other defendants, former employees of plaintiff or members of the Council were injuring and threatening to destroy. It alleges the Tri-City Trades Council attempted to force plain-

tiff to raise the wage paid its employees, and to accomplish its object called a strike of plaintiff's employees. In the course of the strike picketing was resorted to, and the defendants sought the support of non-striking and prospective employees. Plaintiff further claimed that its employees were assaulted by defendants and by those engaged in picketing the shops, and that prospective employees had been so intimidated by defendants that they refused to enter plaintiff's employment.

The gravamen of the plaintiff's bill is found in the following, therefrom:

> "Your orator further represents that the said defendants have combined and conspired to prevent your orator from employing skilled laborers at its plant, although such skilled laborers and your orator have agreed upon terms of employment that are mutually agreeable and satisfactory; that in carrying out such combination and conspiracy the defendants began picketing said plant of your orator on or about April the 23rd, 1914; that the said defendants on April 23rd and since that time have caused various numbers of men or pickets, to-wit: five to thirty men to be stationed adjacent to the main gate of your orator's said plant, which said pickets from that day until the present time have threatened to assault, mistreat and injure various of the employees of your orator unless said employees ceased from their work; that said defendants so combining did on April 29th, 1914, cause two of your orator's employees to be assaulted by said pickets," etc.

Defendants denied any and all acts of violence or assaults of any nature. On the other hand, they claimed that strike-breakers attempted to shoot the

striking employees, and were urged so to do by representatives of plaintiff.

Defendants also denied the existence of any unlawful conspiracy among them, but did admit

> "that said Tri-City Central Trade Council did place certain ones on certain streets and avenues leading to said plant charged with doing picket duty, but such ones were stationed 100 yards from such mill and they were instructed to notify all persons who sought to enter the plant, that there was a strike on, because of such reduction in wages, and such pickets were instructed to use all honorable means to persuade such ones to not enter such plant, and not to take the places of the laboring men, who had gone on a strike on account of such reduction of wages."

The District Judge in rendering his opinion said:

> "This evidence clearly shows that this union, this Trades Council, by the testimony of its officers entered upon the work of preventing this complainant from getting men to run its factory, run its plant except upon the condition that it pay a certain scale, the November scale. That combination was illegal."

Speaking of picketing, he said:

> "However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position, and having these cases frequently before me, has taught me that there is no such thing as peaceful picketing."

Defendants attack the decree on three grounds:

(a) The evidence does not justify the issuance of any injunction.

(b) The restraining order is too broad and restrains defendants from doing lawful acts.

(c) The court is without jurisdiction, because the amount involved does not exceed $3,000.

Evans, Circuit Judge, delivered the opinion of the court.

Defendants' claim that the court was without jurisdiction is without merit. The necessary diversity of citizenship appears. The amount involved exceeds $3,000. It was not necessary that $3,000 worth of property should be destroyed before the Federal court acquired jurisdiction. The alleged threatened damage far exceeded the statutory sum necessary to give the district court jurisdiction.

Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which if carried out would have resulted in the destruction of property. The district judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.

But the court also enjoined the defendants:

> "from picketing or maintaining any picket or pickets on or about the streets leading to the premises of the plaintiff."

And the order continued:

> "It is further ordered * * * that the said defendants * * * be and are perpetually restrained and enjoined * * * from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid."

The obvious effect and purpose of this decree was, among other things, to prevent all picketing by the defendants or others similarly interested, and to prevent these parties from persuading their fellow employees to join them in their effort to secure what the strikers apparently considered the laborer's just demands.

In *Iron Molders' Union* 125, *Milwaukee*, v. *Allis-Chalmers Co.*, 166 Fed., 45, the rule is so well stated that we quote from it the following:

> "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished. In the guise of picketing, strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault. But from the evidence it can always be determined whether the efforts of the pickets

> are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgments. *Prohibitions of persuasion and picketing, as such, should not be included in the decree.*"

Labbatt in his work on Master and Servant, Vol. 7, page 8364, says:

> "Attendance in the vicinity of the employer's place of business for the purpose of obtaining information as to those at work there, or of communicating the information that a strike is in progress, to those who may resort for employment, is uniformly regarded as lawful even where the right to maintain pickets for the purpose of persuasion is denied."

The same writer further says:

> "The preponderance of opinion is to the effect that attendance even in numbers, for the purpose of lawfully persuading others not to work, is permissible, so long as it is not carried on in such a manner as to intimidate persons at work, or seeking employment, or to subject them to undue annoyance, or to interfere with the free access to the employer's premises."

Further authorities in support of the rule laid down in the *Iron Molders Union* v. *Allis-Chalmers Co.* case, *supra*, are, *Gray* v. *Building Trades Council*, 91 Minn., 171; *Karges Furniture Co.* v. *A. W. Local Union*, 165 Ind., 421; *Everett* v. *Typo. Union*, 105 Va., 188; *In re Heffron*, 179 Mo. App., 639; *Jones* v. *Maher*, 116 N. Y. Supp., 1126; *Jones* v. *Van Winkle Gin & Mach. Works*, 131 Ga., 336; *Pope Motor Car Co.* v. *Keegan*, 150 Fed., 148.

But it is contended that the decree in these respects was proper because

(a) The restraining order does not prohibit picketing *per se*, but restrains defendants from carrying out an unlawful conspiracy to destroy plaintiff's business; that in order to prevent the defendants from accomplishing the unlawful object of the conspiracy, it was necessary for the court to restrain the defendants from picketing the plaintiff's works, and prohibit them from arguing their cause with plaintiff's employees.

(b) Defendants were not plaintiff's employees, but were mere outsiders, intermeddlers who were not truly representing the employees, but were trouble makers, fomenting strife and trouble where labor conditions and wages were entirely satisfactory to the employees.

Plaintiff's contention that a court may restrain lawful acts of striking employees when committed to carry out the purpose of an unlawful conspiracy to destroy the employer's business is supported by many authorities. Among them are *Sailor's Union* v. *Hammond Lumber Co.*, 156 Fed., 450; *In re Debs*, 158 U. S., 564; *Barnes* v. *Typo. Union*, 232 Ill., 424; *Karges* v. *Woodworkers Union, supra.*

If the record disclosed the existence of an unlawful conspiracy on the part of the defendants to injure or destroy plaintiff's property the court would be clearly justified in restraining lawful as well as unlawful acts committed in furtherance of such a conspiracy.

If the purpose of the undertaking complained of were purely and simply, or even primarily, interference with the plaintiff in the conduct of its business as alleged, no act however innocent in itself,

directed to that end can be said to have a lawful purpose for its doing. Indeed, it may well be said that any act directed to that end is not a lawful act. If, on the other hand the object of the undertaking is unlawful, then the acts calculated to effectuate the object do not necessarily become unlawful merely because they interfere with the plaintiff's conduct of its business.

The right to strike to secure higher wages and improved conditions of labor is too firmly established to necessitate further elucidation. From the record here we can reach no other conclusion than that the object of this strike was to secure for plaintiff's employees the November wage scale of the union. Nothing appears in the record to indicate that this was not in good faith, or to raise the suspicion that the strike was a mere cloak to cover a deliberate purpose to interfere with the plaintiff's conduct of its business, or to injure and destroy its business and property. The purpose being lawful, if unlawful means are used to effectuate it, such means cannot be made to reach back and taint the purpose itself with unlawfulness, and thus render unlawful all the acts in its furtherance.

In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed, as this court has held, to ascertain whom the late employer:

> "has persuaded or attempted to persuade to accept employment,"

and persuasion may be used to induce them to refuse or quit the employment. As stated further in the *Allis-Chalmers* case:

> "The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. * * * Molders, having struck, in order to make their strike effective, may persuade (but not coerce) other molders not to work for less wages or under worse conditions than those for which they struck, and not to work for their late employer at all, so that he may be forced to take them back into his foundry at their own terms."

Undoubtedly picketing and persuasion would interfere with plaintiff's conduct of its business, in that it would make it more difficult for it to retain old employees and to hire and keep new ones. Indeed, the very act of striking often seriously interferes with that "free and unrestrained control and operation of the employer's business" which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike.

The laborer may be strictly within the rights although he obstructs the "free and unrestrained control and operation of the employer's business." The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employees by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business, any interference with that labor is an interference with the employer's business. But whether the in-

terference with the business is lawful or unlawful depends upon the facts in each case.

The order in the instant case fails to recognize this difference between the *lawful* means of interfering with another's business as an incident to the party's own right and *unlawful* means adopted by the same party. Methods may be considered lawful even though the employer's business is interfered with, because such methods are incidental to the right of the employee, which right should be and is recognized as equal to the right of the employer.

Plaintiff's further contention that the defendants were not its employees at the time of the strike, and therefore had no right to picket or persuade by argument those about to enter plaintiff's employment is not well taken. It is true, a striker is not technically an employee. The relation of employer and employee is temporarily suspended during a strike. The situation has been described as

> "A relationship between employer and employee that is neither that of a general employer and employee, nor that of employer and employee seeking work from them as strangers."

Neither strike nor lockout fully terminates during the strike the relationship between the parties.

Among the defendants in this case there were some former employees. Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest. Under these circumstances, it cannot be said that the labor

organization was an intermeddler or that its course was contrary to the wishes of its members or the wishes of the plaintiff's employees.

Insofar as the decree restrains *all* picketing and *all* persuasion and all interference with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this court for the modification of the decree in the *Allis-Chalmers* case will afford sufficient and proper guidance for the modification of the decree herein.

The decree of the District Court is reversed, with direction to modify the same, and to enter a decree, in accordance with the views herein expressed.

OCT 4 1920
JAMES D. MAHER,
CLERK

General No. 25809. Term No. [redacted]

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM A. D. 1917.

THE AMERICAN STEEL FOUNDRIES,
Petitioner,
vs.
THE TRI-CITY CENTRAL TRADES COUNCIL, *et al.*,
Respondents.

SUPPLEMENTARY BRIEF OF RESPONDENTS.

FRANK C. SMITH,
Solicitor for Respondents.

Press-Record Publishing Co.

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM A. D. 1917.

THE AMERICAN STEEL FOUNDRIES,

Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benjamin Lamb, J. P. McDonnough and C. E. Gerlick,

Respondents.

SUPPLEMENTARY BRIEF OF RESPONDENTS.

TO THE HONORABLE SUPREME COURT:

When this cause stood for oral argument in said court on January 12, 1919, counsel for petitioner filed

an answer to respondent's brief in which complaint was made because the testimony of one Welcher had, in a few instances, been misquoted. In looking into the matter we find his statement, viz: "We had only called for, in round numbers, 300 of approximately 1300 men laid off; 80 or 90 per cent of the old employes were old men. I assume these were members of various organizations." (Ab., p. 51). While in substance there may be no difference the statement was nevertheless erroneously quoted. The mistake was in making use of the quotation marks. On pages 72 and 85, however, Welcher was quoted word for word. In his testimony (Ab., p. 31) he had told of the Tri-City Central Trades Council having sent a committee to wait on him and on page 32 spoke of an open shop, does not recognize organized labor. Hence the local unions affiliated with the Tri-City Central Trades Council is what he referred to. It could not have possibly been any other organization. The only way to account for the oversight mentioned is the short period of time allowed in which to prepare the brief and have it printed. We might add that when this cause was pending in the United States Circuit Court of Appeals on rehearing, Welcher was correctly quoted on page 13 of Appellants' Answer. And again when pending in this court on certiorari he is quoted word for word on page 8 in the brief of respondents.

In view of the fact that a re-argument has been ordered in this proceeding we have felt obligated to file this, our supplemental brief. This injunction suit was filed in the District Court at Springfield, Illinois, May 18, 1914. The acts complained of took place on April 6, 1914, and prior thereto. A temporary restraining order was issued. On June 14 the defendants filed their answer. A hearing was had on June 8, 1914, and the injunction made permanent. From the final decree the defendants appealed. The case was argued orally twice in the United States Circuit Court of Appeals. After judgment in favor of the defendants, the complainant filed a petition for rehearing which was denied. The cause then came to this court on certiorari. On January 17, 1919, it was argued orally. The case is now before the Court for reargument.

While this case was pending in the United States Circuit Court of Appeals, Congress enacted what is known as the Clayton Act. We alluded to the enactment of this law on page 27 of the brief filed in the United States Circuit Court of Appeals. The opinion rendered in said court while favorable to defendants made no reference to such act. In the brief filed in this court on pages 46 and 115, reference was likewise made to such act.

The primary questions involved in this case is the right of workingmen to combine and the right to do peaceful picketing and as these two questions are mentioned in said law we concluded to go into that phase of the case more at length.

The Clayton Act, Enacted By Congress, Aug. 31, 1916.

The parts of the law which we believe will govern in this cause are:

Section 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

"Section 20. That no restraining order, etc. And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or

from ceasing to perform any work or labor, or from recommending, advising or persuading others by peaceful and lawful means so to do, or from paying or giving to or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be a violation of any law of the United States."

As to whether or not a statute is to take effect immediately or at a certain specified time, the intention of the act itself must determine. At the conclusion of the act we find:

Section 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the Court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of or in behalf of the United States, but the same, and in all other cases of contempt not specifically embraced within Section 21 of the act, may be punished in conformity to the usages at law and in equity now prevailing.

Section 25. That no proceeding for contempt shall be instituted against any person unless begun within

the object intended to be accomplished. (P. 1110.)

Vol. 25 of Cyc.

When the statute declares generally that no action, or no action of a certain class, shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would naturally make it to apply to past actions as well as to those arising in the future. (P. 994.)

Except in cases of direct technical trusts, the statute of limitation operates as a bar, in equity as well as in law. (P. 997.)

In Volume 12, Am. & E. of Law, page 527, we find: "The enactment of expost facto laws either by Congress or the Legislature of a state is expressly prohibited by the Federal Constitution" and in defining what an Expost facto law is on page 525, says:

"An Expost facto law is one which in its operation makes that criminal or penal which was not so at the time the action was performed." And in Vol. 24, page 577 we find:

"An Act retroactive in effect where there are no vested rights involved is not contrary to the principles of jurisprudence." We contend that in the case at bar there are no vested rights. As to whether or not an injunction should have been granted in this case is a matter of doubt. To remove that doubt

Congress enacted the Clayton Act. In Vol. 26, Am. & Eng. Enc. of Law, page 529, we find:

"A declaratory statute is one which is passed in order to put an end to a doubt as to what is the common law, or the meaning of another statute, and which declares what it is and ever has been."

In the case of City of Cairo v. Cairo & V. R. R., a controversy arose over the use of the streets. An ordinance having been passed granting the railroad certain rights and privileges, the railroad claimed that the city could not by a subsequent ordinance restrict it in the use of such streets but the Court said the city could do so.

In the case of Sturgis v. Carter, 114 U. S. 511, it would seem the State of Ohio made a change in its tax laws. The County Recorder in order to determine whether or not a certain party had paid the rightful amount of taxes sought to go back a period of four years. The contention was that the act was retroactory and contrary to the constitution. The Court, however, held the County Recorder could do just what he was doing.

In the case of Wrightman v. Boone County, 88 Fed. 435, the question arose as to whether or not the act should or should not have a retroactive effect. The Court in passing on the question said: "The intention of the Legislature in enacting a limitation law should apply and in this case an examination of the

law in question has left no doubt in our minds that the Legislature of Arkansas intended that this act should affect judgments rendered before as well as those rendered after its passage."

We feel that inasmuch as Congress enacted the law in question to settle the questions involved, the law was retroactive to the extent of applying to an injunction proceeding pending at the time. That being so Complainant is without standing in this court.

Clayton Act would supersede and Common Law Holding that a labor union is an unlawful combination.

At common law under a decision in 1721, labor unions in England were held to be criminal conspiracies. An Act of Parliament in 1824, legalized labor unions. Even after this some English courts continued to outlaw them as combinations in restraint of trade, but legislative enactment in 1876 has made labor free (24 Cyc., pp. 818-19). Legislatures as well as courts now recognize the right of laboring people to organize for the purposes of promoting their common welfare, elevating their standard of skill, advancing and maintaining their wages, fixing the hours and rates of wages (24 Cyc., p. 819). In this country some courts have held a labor union to be an unlawful combination. In some instances held to be unlawful on the theory that they are in restraint of trade. Congress having been importuned by labor to give labor unions relief from this source, did on

August 31, 1916, enact what is known as the Clayton Act, Section 6 of which reads as follows:

"That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." The Tri-City Central Trades Council comes within the perview and protection of this statute. Excerpts from the by-laws, introduced in evidence by the Mill Company, on page 60 of the Record, show the council to be organized for mutual help. As stated by Galloway, the president, "One of the purposes of the organization was for their mutual protection, education and social advancement" (Ab., p. 46). The Council was not a stock concern and the only money it had was $87.00 (Ab., p. 46). Nor was it a profit-sharing concern. One of the objects is, however, "To assist each other in securing fair remuneration for labor and forcing recognition of our rights as free citizens, to join and participate in any organization not in violation of the fundamental laws of the land (Ab., p. 61). Had there been anything in the by-laws which tended towards a violation of the laws counsel for complainant would have cited it.

While this injunction suit was filed on May 18, 1914, and the Clayton Act was not passed by Congress until May 31, 1916, and this case was pending in the U. S. Circuit Court of Appeals, the law nevertheless affects this proceeding. To say that the law does not apply would be to contradict Judge Humphrey, the trial Judge, who, in the opinion rendered among other things said:

"This bill is brought upon a different theory from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now, such a combination is unlawful. This evidence clearly shows that this union, the trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon condition that it pay a certain scale, the November scale. That combination is illegal. They hadn't any right to do it." (Ab., p. 63).

"The proof here sustains the averments of the bill, as to the illegal combination. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful." (Ab., p. 64).

We believe, therefore, that Section 6 of the Clayton Act with reference to combinations should be applied in the case at bar.

Judge Humphrey predicated his holding on the theory that the Tri-City Central Trades Council was an unlawful combination or conspiracy. It being unlawful anything done in furtherance of it was unlawful.

On page 63 of the transcript of the record, the trial Judge used these words:

"This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now, such a combination is unlawful."

On page 64, he used this language:

"The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be violent or peaceful."

In 1886 Congress enacted a law whereby workingmen might organize themselves into unions: To promote their general welfare, the elevation of their members, the regulation of their wages and their hours and conditions of labor." (Vol. 24, U. S. St., p. 86).

The Clayton Act (referred to in Brief on page 4), says:

Section 6 of the Act after mentioning labor, horticultural, agricultural and labor organizations, says:

"Nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies under the anti-trust laws."

We have had our doubts as to whether or not the Clayton Act would apply. Section 25 of the Act would indicate that it did, because it provides, "Nothing herein contained shall affect any proceedings of contempt pending at the time of the passage of this act."

The proceedings now before the Court is not a "contempt" proceeding and since "Contempt" proceedings pending were not to be affected it would seem that the ordinary injunction would be. Hence Section 6 of the Act with reference to conspiracies will, we believe, apply to the issues involved in this case.

In Cyc., Vol. 8, page 620, we find this about conspiracy:

"It has been said that there is perhaps no crime, an exact definition of which it is more difficult to give than the offense of conspiracy.

The essentials of a conspiracy, whether viewed with regard to its importance in a criminal prosecution or its significance in civil action for damages, are commonly described in this general language: It is a combination between two or more persons to do a criminal or an unlawful act, or a lawful act by criminal or unlawful means."

Page 637. In the earlier English decisions it was held that while persons may each singly refuse to work unless they receive an advance in wages, yet if they do so by preconcert or association they may be punished as for a conspiracy (English cases cited). The more recent English decisions, influenced no doubt by legislation on the subject, hold that workmen have this right:

Justice Carter in the Kamp case 241-255 Ill. 213, p. 405, says:

"In the last half century the changes in machinery and in social conditions generally have not only greatly affected economic theories, but have required many changes in the law so as to conform to altered social needs. New statutes have been enacted, but, independent of any statute, the courts have gradually adapted the fundamental principles of the law to changing conditions. * * *

"Less than two centuries ago it was held by the English courts to be a criminal conspiracy at common law for two or more persons to combine for the purpose of obtaining higher wages." (P. 398.)

In the 18 Vol. Am. & Eng. Enc. of Law on page 82, we find:

"The advantages which accrue from organization and substitution of concerted action for individual effort are too obvious to require discussion. Com-

bination means power and power in this connection implies the ability to command or control. To gain control over the will of their employer, the ability to dictate the terms and conditions of their employment is the purpose of all combination of laborers. In the Rutherford case, 106 Mass. 1-14, the Court in passing on a like question, said: 'Of what benefit would it be for workingmen to organize if such organization is to be held unlawful. It is idle and vain to give a man a right unless you also give him the power to enforce that right.' "

In the case at bar the testimony of the superintendent alone shows the necessity of organization.

In the Hitchman case (Hitchman, etc., v. John Mitchell *et al.*, decided December 10, 1917), while counsel for appellant would try and make believe that it would govern the issues involved in the case at bar, a perusal of the opinion shows that it will not. In that case the employes had entered into a contract not to become members of the miners' union and it was upon that point the decision finally rested. In this case no witness testified that a contract of any kind was involved. Nor was the question of unionizing the mill involved. All the Tri-City Central Trades Council, through its officers, tried to do, was to carry out the wishes of those employed therein. Those in the employ of the mill and who were members of the different 37 locals comprising the parent body, requested such aid. And while endeavoring to aid them they were indirectly aiding those who were not affiliated with such locals. Because any benefit accruing

to one would go to the other. There are some men who like to have the benefits of organized labor, but do not wish to contribute their portion to its maintenance. Like the citizen who is willing and anxious to receive all the benefits his country may confer upon him but refuses to make any sacrifice in her behalf.

After the U. S. Circuit Court of Appeals decided the Hitchman case, the opinion rendered would indicate that it might apply in this case and it was referred to in Respondent's Brief on petition for certiorari (page 23). Counsel for Petitioner, in Reply Brief for Respondents, on page 7 said:

"Respondents also cite Mitchell v. Hitchman,, Co., 214 Fed. Rep. 686. The Court will find in the opinion at page 690 that the purpose of the injunction was to restrain a labor organization (United Mine Workers of America) from seeking membership among the employes of the Coal Company. The questions presented in the case at bar were in no way involved in that case, and the principle point decided was that the labor organization was not in itself unlawful and should not be enjoined from peaceably seeking to augment its membership from amongst the employes of the coal company." Counsel for Appellant was of the opinion then that the Hitchman case would not govern. We quite agree with him.

Tri-City Central Trades Council represented the Mill Employes.

It is our contention that the Tri-City Central Trades

Council acted as the agent or representative of the employes of the mill.

Galloway (Ab., p. 43) testified: "As president of the Central Trades I first learned of a controversy between wage earners and the foundries from the delegates of the various trades who were refused any wages at that plant and made complaint of the central body that their wages had been reduced from two to nine cents an hour.

After the council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the central body and asked for its co-operation in the matter of arbitration with the foundries. A committee was appointed by the Central body to wait upon this corporation to arbitrate the question (Ab., p. 44).

As chairman, I went into see Mr. Welcher and stated the case to him (Ab., p. 44).

This was about the 20th or 21st of April. It was reported back to the joint board and a strike was declared on the plant. A committee of the joint board of the Tri-City Central Trades Council selected these pickets, rather they were from the different crafts that were connected with the reduction of wages. The joint board placed pickets down there

at the Wabash depot along the streets leading to the plant and we sanctioned their action" (Ab., p. 45).

Cavanaugh, Secretary of the Tri-City Central Trades Council, testified at the regular meeting on April 15th of the Tri-City Central Trades Council, a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday, the 19th. Ten or eleven trades were represented and we decided to call on the American Steel Foundries and see if we could not have the wages reinstated or arbitrate the matter (Ab., p. 57). I wasn't present at the arbitration planned meeting which was on the 20th of April. At the meeting Wednesday evening the committee reported they failed to reach an agreement and the management said they had nothing to arbitrate (Ab., p. 57).

Cross-Examination.

"On April 15, we had a communication from the unions representing some of the trades working in the foundries. We had complaints from the men themselves working at the foundry." (Ab., p. 58).

Hartbeck, member of the Blacksmiths' Union, testified:

"I have been at meetings of the Central Trades

Council and heard it reported about trouble between the complainant and the employes." (Ab., p. 50).

Welcher, the superintendent, stated that "Only two men left our employ in response to the strike order" (Ab., p. 41). And yet he testified, "We ran our plant without any trouble with our men until the morning of the 23rd of April" (Ab., p. 41). "It was impossible to keep ourselves properly employed with the right class of labor to operate the plant" (Ab., p. 410). "Prior to the calling of the strike we had no trouble in securing labor at the plant" (Ab., p. 23). "We have been compelled to employ men to operate various machines who were not as efficient as men we had there prior to April 22" (Ab., p. 25). "We had no trouble with our class of men from April 6th to April 22nd" (Ab., p. 25).

Lamb, Business Agent for the Machinists testified: "Prior to the strike some of the men in my organization were employed at the plant. We called them out after the strike was declared" (Ab. p. 48).

Cross-examination: On the 22nd or 23rd of April, I think five of our machinists were in the plant. One by name of Missel who quit of his own volition and Tom Churchill and Hamp and Drogg. Drogg was what we called a semi-machinist (Ab., p. 48).

Hartbeck, Business Agent Blacksmiths' Union (Ab., p. 50), testified: "When the reduction of wages took effect I was ordered by my superior of our district

board to go over there and to have men over there that would go to work to try and have them come out if they could under reduction of wages. Probably some of our men would go in unbeknowing to the trouble. At the time I went over there none of our men were at work in the plant because they had been sent for" (Ab., p. 51).

Cook testified (Ab., p. 56): "I am an electrician and belong to none of the unions. Worked at the plant about three weeks after it started up. I quit because they cut my wages" (Ab., p. 56). Floyd said "I was going to get 26 cents an hour and when pay day came I got 23. Worked four or five days longer and quit because they said there was a strike on" (Ab., p. 56).

Holmes (Ab., p. 55): "I am an electrician. I worked there when the plant closed in November, didn't go back to work in April on account of the reduction" (Ab., p. 55).

Churchill (Ab., p. 52): "I am a machinist. Was working for the plant when it closed down in November and went back to work when they opened, but got an increase over the new men they had, but still it was a reduction (Ab., p. 52). I quit because these fellows asked me to go out" (Ab., p. 53).

Welcher testified (Ab., p. 41): "We only had called for in round numbers, 300 men, and laid off approximately 1300 men; 80 or 90 per cent of the employes

were old men. I assume these men were members of various organizations; I can't state definitely as to that" (Ab., p. 41).

Fortner (One of Complainant's witnesses; Ab., p. 42), testified: "I worked at the foundry before they closed down in November, running a crane. They resumed work on April 6 and reduced my wages. I worked there from April 6th to April 27th. Went in and out of plant every day and was not molested. It was either Ishman, Lamb or Holmes that told me there was a strike on and I had better quit (Ab., p. 42). I don't belong to one of those labor unions. I did belong to the cranemen's local, but I wasn't working for a couple of months before this trouble and I didn't pay my dues" (Ab., p. 42).

Floyd: "The workmen affected by this picketing are the machinists, craneman and skilled labor. The rest of the plant cannot operate without the cranemen and these skilled laborers" (Ab., p. 43).

While Welcher's testimony showed that 80 or 90 per cent of the 300 men who had resumed work were members of the various locals affiliated with the Tri-City Central Trades Council, our contention is that none of the remaining 1300 had severed their connection with the company. These could have returned but did not do so because of the reduction of wages.

To say that the Tri-City Central Trades Council has no right to intercede in behalf of the employes

of the Mill Company is absurd. The principle of "collective bargaining" is now well established throughout the land and it is the only effective means whereby workingmen may secure concessions through lawful methods. Just how many employes connected with the various locals affiliated with the Tri-City Central Trades Council, were working there at the time, or before, we cannot say, but the testimony of the witnesses would indicate quite a number. Welcher, the superintendent, is probably correct when he said: "We only called in round numbers 300 men and laid off approximately 1300 men; 80 or 90 per cent of the employes were old men. I assume these men were members of various organizations" (Ab., p. 41). Surely he had no other organization in mind other than the labor organizations affiliated with the Tri-City Central Trades Council. His statement supports that of Galloway, president, and Cavanaugh, secretary, officers of the Central Trades Council, who testified that the employes of the Mill Company had suggested to the Tri-City Central Trades Council that it take up the matter (Ab., pp. 43, 57).

It is just as reasonable that the Tri-City Central Trades Council represent the workers employed, or who had been employed, at the mill as it is for counsel to appear representing the Mill Company. If each employe would have to make the individual claim and contest why not each stockholder of the Mill Company make a separate defense or contest. Instead of doing this the stockholders combine and choose officers to represent them. Counsel for the Mill Company

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represents the stockholders because the officers of the combination retained him to do so. Counsel for the Respondents represents the workers in such mill because the officers of the Tri-City Central Trades Counsel retained him to do so. If stockholders may combine, and we are not saying they should not—why not grant workingmen a like privilege?

The whole trouble in this case arose because of the refusal of the Company to deal with the committee chosen. When the committee called at the plant for an interview—at that time having in mind arbitration—Mr. Welcher, the superintendent, said: "Would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievances to come in as individuals" (Ab., p. 44). Every man of experience knows that when the employes of any concern seek to go it alone, as individuals, they never get anywhere. Without an organization they are an impotent force. Imagine the employes appointing a committee to call on the manager because of a grievance about pay or hours. Before the committee could secure an audience they would have been discharged. Having been dismissed from the service they would not be "our employes." This saying, "Merely deal with our employes," is the method adopted by the employer who does not think an employe has any rights or privileges that he should observe. It has been demonstrated that officers of an organization—none of whom are employed in the particular plant—are in a better position to represent the workers because they have nothing to fear.

When the officers and committee of the Tri-City Central Trades Council met in conference with representatives of the Commercial Club the claim was not made that the committee did not represent the employes in the mill. Nor does it appear that up to that time there had been any violence. It was at that time Galloway spoke to Mr. Davis (the general manager) about one of the strikebreakers trying to shoot one of their men and Mr. Davis replied: "The only trouble with the man that done the shooting was that he didn't shoot straight enough" (Ab., p. 56).

At a time when the law abiding workingmen of the country connected with the American Federation of Labor, as is the Tri-City Central Trades Council, are striving their utmost to maintain the principle of collective bargaining and at the same time combatting the evil tendencies of the Bolsheviki-Soviet system which the I. W. W. and other lawless organizations are fostering, it illy becomes a great concern like this mill company to indirectly aid them. Should this court decide the issues involved as Complainant's counsel would have them decided, then every labor union affiliated with the Central Trades Council—as well as the Tri-City Central Trades Council itself—and every organization affiliated with the American Federation of Labor would be declared outlaws. Likewise, the sixteen railroad brotherhoods would come under the lawless ban. No greater calamity could befall the employer class in this country. It is not necessary to recite what has taken place in Russia. Everybody knows. Only recently in Italy a contro-

versy arose over working conditions and the employers closed the mills. The employes took charge of the mills and plants. When the authorities sought to dispossess them through the military power they found the military allied with the workers.

As long as the American employer recognizes the principle of "collective bargaining"—the cardinal principle of the American Federation of Labor—working men in America will decry the Russian Bolsheviki, Soviet, I. W. W. theories. But should this feature be abandoned and labor unions made outlaws then no man may predict what the future may bring forth.

Employer has no property right in his employe.

When this case was tried in the U. S. District Court we contended that the Complainant had no property right in its employes and therefore should not be permitted to maintain its said cause and that it was only upon the theory of such property right the injunction prayed for against the defendants might be awarded. On appeal to the U. S. Circuit Court of Appeals, page 13 of our brief it shows that we made the same contention. We believe that the case of Northern Pacific R. R. v. Whalen, 149 U. S. 157-62, is controlling on that point. In that case it appears the railroad company was constructing an extension and had numerous laborers in its employ. A party by the name of Whalen opened a saloon and as a result the workingmen patronized his place, became intoxicated and they were rendered unable to perform the service required

of them and the progress of the work was interfered with. The railroad sought an injunction to restrain Whalen from thus conducting his saloon at the place mentioned. But the U. S. Supreme Court in deciding the case held that no employer had such a right of property in his workingmen to warrant the issuing of an injunction under the circumstances. In the case at bar the testimony of Complainant's witnesses shows that if any assaults were committed, they were committed beyond the Wabash depot and tracks. And, according to the testimony of the superintendent, Welcher, the Wabash depot is 150 yards from the plant (Ab., p. 29). The four officials of the company who testified, testified they saw no assaults committed.

Hedstrum declared he had been assaulted at the Wabash station (Ab., p. 27); Crawford assaulted beyond the Wabash depot (Ab., p. 28); Quinn was beyond the depot when assaulted (Ab., p. 29); Melton, in lunch room across the track when they threatened me (Ab., p. 30); Francis saw an assault committed near the depot (Ab., p. 31); Bell was struck while up near the stamping works (Ab., p. 32); Floyd saw basket taken from the negro over at the Wabash station (Ab., p. 34); Crabtree was struck by someone with fist on Niedringhaus avenue near the Wabash depot (Ab., p. 35); Cantrell assaulted square from Wabash depot (Ab., p. 35); Knott, at Wabash depot was threatened with a knife (Ab., p. 37); Hillman was six blocks from plant when threatened (Ab., p. 37); Gordon was kicked at the Wabash depot (Ab., p. 38); Stark was

struck with a rock after passing Wabash depot going to the street car (Ab., p. 42).

It is obvious no public right was involved in this case. The public had no interest in the plant. The management could open and close it at will. They could dismantle it if they saw fit. The employes had no interest in the plant other than in it they might secure employment. The operation of a railroad is different for a railroad serves the public and in a measure is controlled by the state. For an employer to seek an injunction against certain ones to restrain them from assaulting its employes 300 feet or more from its plant, it must be upon one theory alone, and that is the right of property in such workingmen. If there was doubt in regard to our position in this matter that doubt was removed when Congress enacted the Clayton Act for Section 6 of such Act provides: "That the labor of a human being is not a commodity or article of commerce." This law having been passed while the case was pending on appeal should govern. Had Congress intended to exempt any injunction proceeding pending it would have said so. Section 24 of the Act does exempt any "Contempt" proceeding pending. But this is not a contempt case. "Judicial notice" would require the Court to take cognizance of the passage of such act.

In the case of Moog v. Randolph, 77 Ala. 597, it was held that "Judicial Notice" would empower the courts to take judicial notice of the journals of the two houses of the General Assembly and search them

for the purpose of ascertaining whether a particular statute, included in the printed volume, published by authority, was enacted in manner and form as provided for by the constitution. On page 27 of Appellant's Brief in the U. S. Circuit Court of Appeals the Clayton Act was alluded to. The Court, however, did not refer to the Act, but did nevertheless decide the issues involved in our favor.

If the Federal Courts seek to control assaults—when no public right is involved—and interfere when one man assaults another they will find much to do. It will be like unto the case of the People v. Dunne, 219 Ill. 346. In that case the Court was asked to mandamus the Mayor of Chicago and require him to observe his oath of office and enforce the city ordinances and the statute of the State of Illinois with reference to closing the saloons on Sundays. The Court considered the matter at length, agreed that the granting of such writ was within their right, but considering the fact there were thousands of saloons in said city the task of governing them was too much for the courts to assume. Rather leave it to the officials chosen for that purpose, even though they failed in the discharge of the duty imposed upon them. And in the case at bar there was a mayor and police department in Granite City, numerous constables, a sheriff with numerous deputies and a governor empowered to call out the militia. There are justices of the peace in Granite City before whom complaints might be filed, a City Court, County Court and a Circuit Court. The laws of the state are ample to pro-

tect any man in his rights and for the prosecution of a wrongdoer. To bring a controversy such as this into the Federal Court seems unwarranted.

Clayton Act and Peaceful Picketing.

In many courts of our land peaceful picketing is recognized as a right and privilege, and workingmen have been upheld in making use of this force to compel the employer or employers to make concessions to the employes. But the District Judge who heard the evidence and approved the final decree held otherwise. To make sure that he might not be misunderstood he rendered an opinion and therein we find the following: "However, speaking upon this question (He had been speaking of an illegal combination), I should say a word about picketing. There is no such thing as peaceful picketing" (Ab., p. 64).

While this case was pending on appeal to the U. S. Circuit Court of Appeals, Congress enacted what is known as the Clayton Act. Section 20 of which reads as follows:

"That no restraining order * * * and no such restraining order, or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons, may lawfully be, for the

purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or abstain from working * * *"

As to whether or not the U. S. Circuit Court of Appeals considered this Act in arriving at its decision we do not know. On page 27 of Appellant's Brief filed in said court, the attention of the said Court was called to the enactment of such law. When the opinion was handed down, while favorable to appellants, the Clayton Act was not alluded to. A perusal of the Act in its entirety would seem to indicate that the law was intended to affect any injunction proceeding then pending.

While the trial Judge held there was no such thing as peaceful picketing, the evidence is there was in this case. The four officials of the company dispute the Judge on this point.

Welcher, the superintendent, testified: "I saw none of the men assaulted. The pickets did not come with inside the fence to my knowledge. At times they were within 20 feet of the plant. They were trying to prevail upon the men from entering the plant (Ab., p. 31). I saw no assaults committed; I saw no disturbance" (Ab., p. 31).

Floyd, employment agent: "My office is located so I can look across the railroad track (Ab., p. 42). I am in my office from 7 to 12 in the morning and from 6:30, 7:30, 8, 9 or 10 o'clock at night. I did not see

any of the particular attacks mentioned. All I saw was the pickets talking to the men and the men being stopped" (Ab., p. 43).

Hoffman, the foreman: "One hundred feet is the nearest I ever saw the pickets to the plant. All I saw them do was talk to the men. I saw no assaults (Ab., p. 45). I worked there every night and only saw the men stopped" (Ab., p. 45).

Hall, master mechanic: "When Lamb told me he did not like the way we were treating the boys he had reduction of the wages in mind. This reduction was the cause of the strike. I never saw any acts of violence or any of the assaults (Ab., p. 50). I only saw them stop the men and try to induce them to quit work and in this particular Freddy matter to make threats of violence (Ab., p. 50). The threat against Freddy took place as he was getting off the street car by some parties he did not know" (Ab., p. 49).

According to the testimony of Welcher the Wabash track and depot is 150 yards from the plant (Ab., p. 29). It is obvious that if assaults were committed, which our witnesses do not concede, such assaults took place beyond that point. The evidence is conclusive that there was peaceful picketing between the Wabash depot and the plant. On this point the District Judge who said there was no such thing as peaceful picketing is disputed by witnesses of the company itself.

Under the decisions of the courts heretofore cited, this court, we believe should, in its holding, sustain the U. S. Circuit Court of Appeals. The Clayton Act, if held to apply in this case, and we believe it does, is conclusive. We have never contended for any kind of picketing other than peaceful picketing. When a like case was decided in the U. S. Circuit Court of Appeals, Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 45 (1908), the Court among other things said:

> "On the other side of this limiting line, appellants, we think, had the right, for the purpose of maintaining or increasing the incorporeal value of their capacity to labor, to an equally free access to the labor market. The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. For another thing that must not be forgotten is that a strike is one manifestation of the competition, the struggle for survival or place, that is inevitable in individualistic society. Dividends and wages must both come from the joint product of capital and labor. And in the struggle wherein each is seeking to hold or enlarge his ground, we believe it is fundamental that one and the same set of rules should govern the action of both contestants." (P. 50.)

> "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under

the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished." (P. 51.)

"A strike is cessation of work by employes in an effort to get for the employes more desirable terms. A lockout is a cessation of the furnishing of work to employes in an effort to get for the employer more desirable terms. Neither strike nor lockout completely terminates, when this is its purpose, the relationship between the parties. The employes who remain to take part in the strike or weather the lockout do so that they may be ready to go to work again on terms to which they shall agree—the employer remaining ready to take them back on terms to which he shall agree. Manifestly, then, pending a strike or a lockout, and as to those who have not finally and in good faith abandoned it, a relationship exists between employer and employe that is neither that of the general relation of employer and employe, nor again that of employer looking among strangers for employes, or employes seeking from strangers employment." (P. 52.)

In the Beaton Case, 102 Ill. App., the Court, on page 126 says:

"The right of workingmen to organize and combine for their own protection is no longer an open question. They may individually or collectively quit work of an employer and use all peaceable means to induce other workmen to quit even though the works of the employer be closed and loss ensue."

In the Kemp case, 241 Ill. 213 (Again before the Court in 255 Ill.), the Court said:

> "The purpose of organizing labor unions is to enable employes, who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union."

In the Elliott Case, 62 Fed. 801, the Court on page 817, said:

> "It may be conceded that employes of the receiver had a right to organize into, or join a labor union, which would take joint action as to terms of employment. If they stand together they are often, all of them, to command better prices for their labor than when dealing singly with rich employers, because the necessities of a single employe may compel him to accept any terms offered."

The questions involved in this proceeding are of vital importance and under the common law, as well as under the Clayton Act, we believe should be decided adversely to the claim of Petitioner.

Respectfully submitted,

FRANK C. SMITH,
Counsel for Respondents.

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AMERICAN STEEL FOUNDRIES *v.* TRI-CITY CENTRAL TRADES COUNCIL ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 2. Argued January 17, 1919; restored to docket for reargument June 1, 1920; reargued October 5, 1920; restored to docket for reargument June 6, 1921; reargued October 4, 5, 1921.—Decided December 5, 1921.

1. A decree of injunction in a labor controversy was entered in the District Court before the date of the Clayton Act, c. 323, 38 Stat. 738, but was pending on appeal in the Circuit Court of Appeals when the act was approved. *Held*, that the plaintiff had no vested right in the decree, and that the act was to be regarded in determining the appeal. P. 201.
2. The irreparable injury to property referred to in the first paragraph of § 20 of the Clayton Act, *supra*, includes injury to the business of an employer. P. 202.
3. The second paragraph of § 20 of the Clayton Act does not apply to a dispute between an employer and persons who are neither ex-employees nor seeking employment. *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443. *Held*, in this case, that only those defendants who left the plaintiff's employ when a strike was called

by the defendant labor union, as distinguished from those who had been employed but were laid off some months previously and those who had not been in the employment, could invoke § 20 in their behalf. P. 202.

4. The Clayton Act, § 20, in forbidding injunctions to restrain employees, recent or expectant, from the use of peaceful persuasion in promotion of their side of the controversy, or from obtaining or communicating information in any place where they may lawfully be, merely declares and stabilizes what was always the best equity practice. P. 203.
5. Workmen have the right to work for whom they will and to go freely to and from their place of labor undisturbed by annoying importunities or by the intimidation of numbers; and their employer has a right, incident to his property and business, that they have free access to the place where the business is conducted. P. 203.
6. The "picketing" of an employer's plant by groups of men stationed near the points of ingress and egress and in neighboring streets, who importunately intercepted the workmen of the employer or others seeking employment, and whose activities collected crowds of bystanders and resulted in personal violence, *held* unlawful and to be enjoined *eo nomine*, without adding the words "in a threatening or intimidating manner." Pp. 204, 207.
7. Such "picketing" creates a condition of intimidation in which there can be no peaceable communication of information or peaceable persuasion in the sense of the Clayton Act. P. 205.
8. An injunction for the protection of an employer in a strike controversy should be adapted to the facts of the particular case, safeguarding his rights while affording to ex-employees and others properly acting with them opportunity, consistent with peace and law, to observe who are still working for the employer, to communicate with them and to persuade them to join his opponents. *Held*, in this case, that the strikers and their sympathizers should be limited to one representative for each point of ingress and egress at the plant, and that all others should be enjoined from congregating or loitering about the plant or in neighboring streets affording access thereto, that such representatives should have the right of observation, communication and persuasion, avoiding abuse, libel or threats, and in their efforts singly should not obstruct an unwilling listener by importunate following or dogging of his steps. P. 206.

9. An injunction broadly forbidding ex-employees from persuading employees and would-be employees to leave or stay out of the employment conflicts with the Clayton Act, *supra*. P. 208.
10. Where the members of a local labor union, though not ex-employees within the Clayton Act, have reason to expect reëmployment at a plant where wages have been reduced, interference by them and their union by peaceable persuasion and appeal to induce a strike against the lowered wages, is not malicious or without lawful excuse, and the principle against malicious enticement of laborers does not apply. P. 208. *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; and *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, distinguished.

238 Fed. 728, reversed in part and affirmed in part.

REVIEW of a decree of the Circuit Court of Appeals which affirmed, with important modifications, a decree of injunction rendered by the District Court at the suit of the present petitioner against the respondent labor union and individuals.

Mr. Max Pam, with whom *Mr. Harry Boyd Hurd* and *Mr. William E. Wheeler* were on the briefs, for petitioner.

The statutes of Illinois and the decisions of its Supreme Court, establishing the rule in that State with respect to the subject-matter of conspiracy, picketing and persuasion, should prevail. Crim. Code, c. 38, §§ 46, 158, 159; *Barnes & Co.* v. *Typographical Union*, 232 Ill. 424, 431, 434; *O'Brien* v. *People*, 216 Ill. 371; *Doremus* v. *Hennessy*, 176 Ill. 608, 614; *Purington* v. *Hinchliff*, 219 Ill. 159, 166, 167.

Kemp v. *Division No. 241*, 255 Ill. 213, does not modify the Illinois rule contended for by petitioner. Here the Trades Council arrogated to itself the prerogative to demand from petitioner a change in wages, without meeting or vote of the petitioner's employees and without authority or request of the employees.

Even the two men who quit the employ had no relation to the initiation of the strike and knew nothing of it

until after the strike had been launched. See *Henrici Co.* v. *Alexander*, 198 Ill. App. 568.

In each of the cases cited by the court below in support of its opinion there existed a controversy between employer and employee; a strike had been called by the employees and not by any stranger to the employer, nor by any outside organization unauthorized to represent or speak for the employees. In *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45, the company recognized the unions as the representatives of its employees and to have authority from them to strike, and in that capacity made the unions defendants.

There is involved here a strict rule of property, upon which the Supreme Court of Illinois has spoken. The federal courts will enforce the laws of the State, so construed.

Under the decisions of this court the rule in Illinois should control. The bill was filed on the basis of diversity of citizenship. Petitioner waived none of its rights under the laws of Illinois. *Burgess* v. *Seligman*, 107 U. S. 20, 33; *Bucher* v. *Cheshire R. R. Co.*, 125 U. S. 555; *Gormley* v. *Clark*, 134 U. S. 338.

The rule in Illinois relating to picketing without physical violence is sustained in other States and jurisdictions. *Atchison, Topeka & Santa Fe Ry. Co.* v. *Gee*, 139 Fed. 582; *Beck* v. *Teamsters' Union*, 118 Mich. 497; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418; *Jones* v. *Van Winkle Gin & Machine Works*, 131 Ga. 336; *Sailors' Union* v. *Hammond Lumber Co.*, 156 Fed. 450; *Stephens* v. *Ohio State Telephone Co.*, 240 Fed. 759; *Vonnegut Machinery Co.* v. *Toledo Machine Co.*, 263 Fed. 192; *Kinloch Telephone Co.* v. *Local Union No. 2*, 265 Fed. 312.

Hitchman Coal & Coke Co. v. *Mitchell*, 245 U. S. 229, and similar cases, sustain petitioner's contentions. The respondents were engaged in a conspiracy to force the

employees of petitioner, who were satisfied with their wages or conditions of labor, to abandon their employment, violate their contracts and thereby force the establishment of a new basis of employment between the petitioner and its employees. They were strangers to both and interlopers in a situation that was tranquil and contented and in which they had no interest.

It is not necessary that there should be time contracts. Employment at will is sufficient.

The law as announced in the *Hitchman Case* is supported in other States and jurisdictions. See *Old Dominion S. S. Co.* v. *McKenna*, 30 Fed. 48, 49; *United States* v. *Haggerty*, 116 Fed. 510; *Casey* v. *Cincinnati Typographical Union*, 45 Fed. 135; *State* v. *Glidden*, 55 Conn. 46; *Jersey City Printing Co.* v. *Cassidy*, 63 N. J. Eq. 759; *Frank & Dugan* v. *Herold*, 63 N. J. Eq. 443; *Flaccus* v. *Smith*, 199 Pa. St. 128.

In this case the conduct of respondents was so violent in its lawlessness, so brutal in its practice, that it comes within the class of cases requiring and justifying injunction because of the resort to intimidation, physical force and destruction.

The rights of petitioner by final decree were vested before the Clayton Act became law. No retroactive effect can be given it. While it may be contended that legislation subsequent to adjudication may affect proceedings between public bodies or between an individual and the public, no such rule can apply in a proceeding between private parties. *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421, 431. A final judgment or decree is property just as much as any other form of property. *Memphis* v. *United States*, 97 U. S. 293, 296, 298; *Fisher's Negroes* v. *Dabbs*, 6 Yerg. (Tenn.) 119; *Livingston* v. *Livingston*, 173 N. Y. 377, 381; *Humphrey* v. *Gerard*, 83 Conn. 346; *Strafford* v. *Sharon*, 61 Vt. 126; *Merchants Bank* v. *Ballou*, 98 Va. 112; *Edwards* v. *Kearzey*, 96 U. S. 595, 600.

The Clayton Act was intended to govern the acts of courts of original jurisdiction and proceedings at *nisi prius* and could not practically be invoked on appeal. It cannot be made applicable to this case, because it is not a case involving or growing out of a dispute concerning terms or conditions of employment,—between employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment. There was no strike at this plant instituted by the employees or with the authority of the employees. There was no controversy or dispute between the petitioner and its employees. Only two of the employees left the employ of petitioner, and neither because of any strike of the employees.

Section 20 of the Clayton Act is further inapplicable because an injunction was necessary to prevent irreparable injury to property or to a property right for which there was no adequate remedy at law.

The Clayton Act not only is inapplicable in this case with reference to the acts of assault and violence and physical brutality, but also against picketing *per se*, unattended by acts of physical violence. *Montgomery* v. *Pacific Electric Ry. Co.*, 258 Fed. 382; *Dail-Overland Co.* v. *Willys-Overland, Inc.*, 263 Fed. 171; *Kinloch Telephone Co.* v. *Local Union No. 2*, 265 Fed. 312.

This court has decided that § 20 of the Clayton Act is not applicable to cases like this. *Paine Lumber Co.* v. *Neal*, 244 U. S. 459; *Hitchman Coal & Coke Co.* v. *Mitchell, supra; Eagle Glass & Manufacturing Co.* v. *Rowe*, 245 U. S. 275; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443.

Mr. Frank C. Smith for respondents.

There is not a scintilla of evidence that the Trades Council, or other of the defendants, formed, or attempted to form, a conspiracy. The testimony of the officers is

that no unlawful act was authorized. Quite true, there is a difference of opinion as to what may be considered lawful. The officers believed that to place pickets on the streets leading to the plant, to try and persuade workingmen not to go in to work while the strike was on, was within the law. The District Judge, however, was of the opinion that any kind of picketing was unlawful.

For workingmen to organize into unions and to concentrate their unions under one head, the object of which is to improve the conditions of the toilers, is not an unlawful combination.

To order a strike is not unlawful. Labor unions have this right; and to picket a plant, and for pickets to try to persuade men from taking the places of those who go out in response to a strike order, is not unlawful. *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45; *In re Heffron*, 179 Mo. App. 639; *Beaton* v. *Tarrant*, 102 Ill. App. 129; *People* v. *Young*, 188 Ill. App. 208; *Karges Furniture Co.* v. *Amalgamated, etc., Union*, 165 Ind. 421; *Marx & Haas Jeans Clothing Co.* v. *Watson*, 168 Mo. 133; *American Steel & Wire Co.* v. *Wire Drawers' Unions*, 90 Fed. 608; *Gray* v. *Building Trades Council*, 91 Minn. 171; 18 Am. & Eng. Encyc. of Law, 2d ed., 87; High on Injunction, § 1415–j; *Levy* v. *Rosenstein*, 66 N. Y. S. 101; *Wood Co.* v. *Toohey*, 186 N. Y. S. 95; Clayton Act, § 20.

An injunction in an industrial dispute should not prohibit either persuasion or picketing. *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45; *United States* v. *Kane*, 23 Fed. 748; *Allis Chalmers Co.* v. *Reliable Lodge*, 111 Fed. 264; *Beck* v. *Teamsters' Union*, 118 Mich. 497; *Hamilton-Brown Shoe Co.* v. *Saxey*, 131 Mo. 212; *Gray* v. *Building Trades Council*, 91 Minn. 171; *Everett Waddey Co.* v. *Richmond Typographical Union*, 105 Va. 188; *People* v. *Young*, 188 Ill. App. 208; *In re Heffron*, 179 Mo. App. 639; *American Steel & Wire Co.* v. *Wire Drawers' Unions*, 90 Fed. 608; *Pope Motor Car Co.*

v. *Keegan*, 150 Fed. 148; *Searle Manufacturing Co.* v. *Terry*, 106 N. Y. S. 438; *Kinloch Telephone Co.* v. *Local Union No. 2*, 265 Fed. 312; Clayton Act, § 20.

Unless this court will hold an agreement to do peaceful picketing, thus trying to enforce a demand, unlawful, then the contention that the Council is an unlawful combination is without merit.

The claim that the Council did not represent the workers in the plant is beyond our comprehension. According to the testimony of plaintiff's superintendent, of the 1,300 laid off in November, only about 400 were called for. He said that 80 or 90 per cent. were old men and members of the various organizations. If a man is "laid off", that does not signify he has severed his connection with his employer. It was these employees—the 80 or 90 per cent.—who, as members of various organizations, made complaint to the Council. Furthermore, it is our contention that none of the remaining 1,300 had severed their connection with the company. These could have returned, but did not do so, because of the reduction of wages. To say that the Council has no right to intercede in behalf of the employees of the company is absurd. The principle of "collective bargaining" is now too well established.

In every case the alleged assaults took place some distance from the plant. Whether justified or not, those charged with doing picket duty feel that "strikebreakers" were responsible for the assaults committed.

We contend that the Trades Council was strictly within its rights in doing peaceful picketing. Lawless acts—if any were committed—we have not sought to defend. *Kolley* v. *Robinson*, 187 Fed. 415; *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45; *Pope Motor Car Co.* v. *Keegan*, 150 Fed. 148; *People* v. *Young*, 188 Ill. App. 208.

The Illinois court, in *Kemp* v. *Division No. 241*, 255 Ill. 213, refused to follow rulings in *Franklin Union* v.

People, 220 Ill. 355; and *Barnes & Co.* v. *Typographical Union*, 232 Ill. 424. In *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, there were contracts not to join the union. In *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, no question of combination or peaceful picketing was considered.

Section 20 of the Clayton Act applies, expressly sanctioning peaceful picketing.

A court is not warranted in enjoining persons from congregating on the sidewalk, or from addressing remarks concerning the business of another, or from distributing circulars. *In re Heffron, supra; People* v. *Young, supra; Gray* v. *Building Trades Council, supra; Marx & Haas Jeans Clothing Co.* v. *Watson, supra.*

To prevent a workingman from exercising the right of persuasion would deprive him of the right of free speech, guaranteed by the Constitution. To prohibit his right at or near the plant, on the streets leading to it, or elsewhere, is too general. *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45; *Marx & Haas Jeans Clothing Co.* v. *Watson, supra;* 18 Am. & Eng. Encyc. of Law, 2d ed., 87; *United States* v. *Kane*, 23 Fed. 748; *Kolley* v. *Robinson*, 187 Fed. 415; *Kinloch Telephone Co.* v. *Local Union No. 2*, 265 Fed. 312; Clayton Act. § 20.

The plant was not injured, and no injunction should have issued, because no property right was involved. *Northern Pacific R. R. Co.* v. *Whalen*, 149 U. S. 157. Labor is not a commodity (Clayton Act, § 6,) and an employer has no property right in his workmen.

The decree of the District Court was fatally defective because it was vague and ambiguous,—a dragnet. *Laurie* v. *Laurie*, 9 Paige, 234; *Avery* v. *Onillon*, 10 La. Ann. 127; *Swift & Co.* v. *United States*, 196 U. S. 375; *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45, 46.

The Clayton Act is retroactive and controlling.

MR. CHIEF JUSTICE TAFT delivered the opinion of the court.

The American Steel Foundries is a New Jersey corporation operating a large plant for the manufacture of steel products in Granite City, Illinois. In May, 1914, it filed a bill in the District Court for the Southern District of Illinois to enjoin the defendants, the Tri-City Central Trades Council, and fourteen individual defendants, some of them officers of the Council, all of them citizens of other States than New Jersey, from carrying on a conspiracy to prevent complainant from retaining and obtaining skilled laborers to operate its plant. The bill charged that the conspiracy was being executed by organized picketing, accompanied by threats, intimidation and violence toward persons employed or seeking employment there. The defendants in their answer admitted that the Central Trades Council had established a picket upon streets leading to the plant, with instructions to notify all persons entering it that a strike had been called because of reduction of wages, and to use all honorable means to persuade such persons not to take the places of the men on the strike; admitted the participation of individual defendants in the picketing, but denied threats of injury or violence or responsibility for the violence that admittedly had occurred. After replication was filed, the cause was heard. A restraining order issued on filing of the bill, and a final decree was entered by which defendants were "perpetually restrained and enjoined from in any way or manner whatsoever by use of *persuasion*, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of

Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by *persuasion,* violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by *persuasion,* threats, intimidation, force or violence or putting in fear or suggestions of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by *persuasion,* threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of said American Steel Foundries; and from protecting, aiding or assisting any person, or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries for the purpose of doing, or aiding or encouraging others in doing, any of the said unlawful or forbidden acts or things; *and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets,* and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the said American Steel Foundries."

There were twelve assignments of error on the appeal to the Circuit Court of Appeals, but the important ones which raised the issue in this case were as follows:

"Eighth. Because the complainant was not entitled to an injunction prohibiting the defendants while on the streets of Granite City or while in proximity to such foundry, from trying to persuade strike breakers from taking the places of the strikers.

"Ninth. Because the complainant was not entitled to an injunction prohibiting the defendants from stopping employees of complainant and suggesting to them that they should not work at such plant while a strike was on.

"Tenth. Because the complainant was not entitled to an injunction prohibiting the defendants from assembling, or congregating, in proximity of said foundry, or on the streets leading to such foundry.

"Eleventh. Because the complainant was not entitled to an injunction prohibiting the defendants from placing any picket, or pickets, upon the streets leading to such foundry, whose duty it was to notify those entering said foundry that there was a strike on."

The Circuit Court of Appeals modified the final decree by striking out the word "persuasion" in the four places in which it occurred, and by inserting after the clause restraining picketing the following: "in a threatening or intimidating manner." 238 Fed. 728.

The Tri-City Central Trades Council is a labor organization composed of representatives of thirty-seven trade unions of Granite City, Madison and Venice, adjoining towns in Illinois, including among them electricians, cranemen, mill hands, machinists, and stationary engineers. In April, 1914, the complainant, which ordinarily in full operation employed 1600 men, and whose plant had been shut down since November of the previous year, resumed operations with about 350 of its regular men, 150 of whom belonged to the skilled trades, electricians,

cranemen, mill hands, machinists and blacksmiths. At this trial, the works manager testified: "When we opened April 6th we employed whoever we saw fit, whoever applied for employment at the gate. We only had called for in round numbers 300 men, and laid off approximately 1300 men. Eighty or ninety per cent. of the employees were old men. I assume these men were members of various organizations; I can't state definitely as to that." When business was resumed in April, half of the skilled workmen were given wages at rates from two cents to ten cents an hour below those paid before the plant had shut down. The Trades Council was advised of this about April 15th, and appointed a committee to secure reinstatement of the previous wages. The manager of the complainant told them that he ran an open shop, did not recognize organized labor and would not deal with the committee, but would entertain any complaint by an employee. The Council thereupon, on April 22nd, declared a strike on complainant's plant and displayed outside of the entrance to the plant a printed notice announcing that a strike was on at the plant and calling on union men and all labor to remain away from the works in order that an increase in wages might be secured. Only two men, defendants Churchill and Cook, acted upon the order to strike. Churchill was a member of the Machinist's Union. Cook was not a member of any union. The Council then established a picket, which was carried on for three or four weeks without intermission until the bill was filed on May 18th, and a restraining order issued.

Complainant's plant was in an enclosure of twenty-five acres and fronted on Niedringhaus Avenue. The Wabash and other railroads crossed this street and ran along the side of the plant. There were four tracks. The time keeper's gate of the plant opened on to the tracks. Directly opposite on the other side of the tracks was the Wabash depot, from three to four hundred feet from the

plant. It was on Niedringhaus Avenue, and this street was the one used by many of the plant's employees in going to their homes in Granite City and in reaching the terminal of the street car line which many used. Complainant's employees testified that, just as the picketing began, they were warned by some of the defendants that they would be hurt if they did not quit. The master mechanic of the plant, Hall, testified that Lamb, one of the defendants, the national representative of the Machinist's Union at St. Louis, when in company with four other pickets, handed him the circular of the Trades Council, and told him, "We don't like the way you have treated our boys down here, and we just came down to raise a little hell." Lamb admitted saying to Hall that the cut in wages was a severe one and that it looked as though they were going to raise hell in the town because conditions were good; that he didn't like to see a fight going on, but it looked as though it would come. The evidence showed that the pickets would stand about near the Wabash tracks, sometimes on the Foundries' side, sometimes on the depot side, sometimes on Niedringhaus Avenue, and that there were three or four groups of them varying from four to a dozen in each group. The headquarters of all the groups was at the Wabash depot.

There was an assault on April 30th, in which one Hafner, an employee, was attacked by three of the picketers. On May 8th, a man named Crabtree and four other employees were attacked by a group of more than seven of the pickets. On May 13th, another assault occurred, which developed into a mob, and two witnesses for complainant swore positively that the President of the Trades Council, Galloway, was engaged in this disturbance and was throwing bricks. There were other assaults, the last one on May 18th before the restraining order issued that day reached the picketers. Officers of the company testified that a number of men wounded in these assaults

were brought into the plant. All disturbances ceased after the restraining orders were served.

Galloway testified he was present at the plant three mornings for about fifteen or twenty minutes, and four or five evenings for maybe half an hour; that he engaged in no violence while he was there and saw none; that the representatives of the Central Trades were there doing picket duty, and that the closest he saw them to the plant was 20 feet in front of Wabash depot; that the Central Trades did not instruct anybody to assault anyone, but told them to picket the streets leading to the plant, and ask the men not to go into the plant or take work under the reduced wages. He said that the pickets were selected from the different crafts interested in the wages; that the joint board of the Council placed the pickets where they were, and the Council then sanctioned this action. He said he went down there to see that things were going right; that they placed the pickets there to prevent, if possible, the men from entering and working at the plant until they arbitrated the difference or advanced their wages to the former scale; that the pickets were not authorized to commit an unlawful act.

B. F. Lamb, already referred to, visited Granite City because he had a local union there affiliated with the Tri-City Trades Council. He went there three times a week during the strike, and did picket duty. He was on the picket line itself, which was about 100 or 120 yards from the plant. Pickets were merely there to convey information and ask coöperation. He denied that they authorized any assaults and he saw no assaulting. He heard of some fights which took place away from the plant, but he was in no way connected with them.

Hartbeck, who was business agent and secretary of the Blacksmith's Union, said that he acted on the picket line every time he went over there, sometimes in the evening, sometimes at noon time. He said the pickets would ap-

proach a man and tell him the conditions and request him to come out; that he did that himself, but that he never threatened anyone and never used any violence of any kind. He said: "In my estimation the four or five witnesses who swore to my presence at different times to assault testified falsely. . . . When the reduction of wages took effect, I was ordered by the superior of our District Board to go over there and to have men over there that would go to work to try to have them come out if they could under reduction of wages; probably some of our union men would go in unbeknowns of the trouble. At the time I went over there none of our men were at work in the plant because they had been sent for. But I went over anyway."

Harry McKenny, a picket, testified that he did assault one of the fellows there; that he, Churchill and another picket, were standing together, and that he told a man named Hafner, an employee, to stay away from the building; that Hafner called him an insulting and profane name, and said he would work where he pleased, and that then he hit Hafner; that he never tried to stop anybody from going into the plant by force; that he did hit Hafner while he was on the picket line; that he did not hit him because he was going into the works, but just because he called him a bad name.

Churchill, a striker and picket, said he "never struck a man over there; merely warned them, asked them to stay out of there; better keep away." He said that he was present when Hafner was hit by McKenny for calling him a bad name, that Hafner begged them not to hit him again, but McKenny hit him twice.. Then Hafner said he was going home. Churchill said he was present when the porter from the plant was bringing in two lunch baskets, that someone kicked the baskets out of the porter's hands. Churchill said he was in the "bunch" standing there but he did not know who the man was

that upset them. He said two or three fights took place, and that he (Churchill) saw the big one with 200 men in it. He was half a block away.

Ishman, another picketer, said he was a craneman and resided at Granite City; that he was a member of the Cranemen's Union, that he did picket duty during the strike, that he was there quite a bit morning and evening; that the duty of the pickets was to inform the employees of the plant that there was a strike on and to inform them of the conditions under which they were working. He said that on May 8th, Crabtree, an employee, and four other employees, were coming across the railroad tracks from their work; that they had seven pickets there. He said they got to talking to them and somebody started a fight; he said somebody made a pass at him and that he hit somebody. He said they claimed it was Crabtree; that it was 150 yards from the plant.

Cook, a defendant who was not a union man, went out with the strike. He said he left because he did not like his wages, and quit because there was a strike on. Nobody sent him there as a picket, but he joined them, and they were all together picketing and talking to some men going to or coming from work. He said he wanted to quit work and did not want anybody else to work in his place.

It is clear from the evidence that from the outset, violent methods were pursued from time to time in such a way as to characterize the attitude of the picketers as continuously threatening. A number of employees, sometimes fifteen or more, slept in the plant for a week during the trouble, because they could not safely go to their homes. The result of the campaign was to put employees and would-be employees in such fear that many abandoned work and this seriously interfered with the complainant in operating the plant until the issue of the restraining order.

The first question in the case is whether § 20 of the Clayton Act, October 15, 1914, c. 323, 38 Stat. 738, is to be applied in this case. The act was passed while this case was pending in the Circuit Court of Appeals. In *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 464, a suit to restrain a secondary boycott had been brought before the passage of the act, but did not come to hearing until after its passage. It was held that, because relief by injunction operates *in futuro* and the right to it must be determined as of the time of the hearing, § 20 of the act, relating to injunctions, was controlling in so far that decrees entered after its passage should conform to its provisions. The decree here appealed from in the District Court had been entered before the Clayton Act passed. But the whole cause was taken up by the appeal. The complainant had no vested right in the decree of the District Court while it was subject to review. *Rafferty* v. *Smith, Bell & Co.*, this day announced, *post*, 226. The Circuit Court of Appeals was called upon to approve or to change the decree and was obliged, therefore, to regard the new statute in its conclusion, and so are we.

Section 20 is as follows:

"That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

It has been determined by this court that the irreparable injury to property or to a property right, in the first paragraph of § 20, includes injury to the business of an employer, and that the second paragraph applies only in cases growing out of a dispute concerning terms or conditions of employment, between an employer and employee, between employers and employees, or between employees, or between persons employed and persons seeking employment, and not to such dispute between an employer and persons who are neither ex-employees nor seeking employment. *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443. Only two of the defendants, Cook and Churchill, who left at the time of the strike, can invoke in their behalf § 20. We must, therefore, first consider the propriety of the decree as against them, and then as against the other defendants.

The prohibitions of § 20, material here, are those which forbid an injunction against, first, recommending, advising or persuading others by peaceful means to cease employment and labor; second, attending at any place where such person or persons may lawfully be for the purpose of peacefully obtaining or communicating information, or peacefully persuading any person to work or to abstain from working; third, peaceably assembling in a lawful manner and for lawful purposes. This court has already called attention in the *Duplex Case* to the emphasis upon the words "peaceful" and "lawful" in this section. 254 U. S. 443, 473. It is clear that Congress wished to forbid the use by the federal courts of their equity arm to prevent peaceable persuasion by employees, discharged or expectant, in promotion of their side of the dispute, and to secure them against judicial restraint in obtaining or communicating information in any place where they might lawfully be. This introduces no new principle into the equity jurisprudence of those courts. It is merely declaratory of what was the best practice always. Congress thought it wise to stabilize this rule of action and render it uniform.

The object and problem of Congress in § 20, and indeed of courts of equity before its enactment, was to reconcile the rights of the employer in his business and in the access of his employees to his place of business and egress therefrom without intimidation or obstruction, on the one hand, and the right of the employees, recent or expectant, to use peaceable and lawful means to induce present employees and would-be employees to join their ranks, on the other. If, in their attempts at persuasion or communication with those whom they would enlist with them, those of the labor side adopt methods which however lawful in their announced purpose inevitably lead to intimidation and obstruction, then it is the court's duty which the terms of § 20 do not modify, so to limit what

the propagandists do as to time, manner and place as shall prevent infractions of the law and violations of the right of the employees, and of the employer for whom they wish to work.

How far may men go in persuasion and communication and still not violate the right of those whom they would influence? In going to and from work, men have a right to as free a passage without obstruction as the streets afford, consistent with the right of others to enjoy the same privilege. We are a social people and the accosting by one of another in an inoffensive way and an offer by one to communicate and discuss information with a view to influencing the other's action are not regarded as aggression or a violation of that other's rights. If, however, the offer is declined, as it may rightfully be, then persistence, importunity, following and dogging become unjustifiable annoyance and obstruction which is likely soon to savor of intimidation. From all of this the person sought to be influenced has a right to be free and his employer has a right to have him free.

The nearer this importunate intercepting of employees or would-be employees is to the place of business, the greater the obstruction and interference with the business and especially with the property right of access of the employer. Attempted discussion and argument of this kind in such proximity is certain to attract attention and congregation of the curious, or, it may be, interested bystanders, and thus to increase the obstruction as well as the aspect of intimidation which the situation quickly assumes. In the present case the three or four groups of picketers, were made up of from four to twelve in a group. They constituted the picket lines. Each union interested, electricians, cranemen, machinists and blacksmiths, had several representatives on the picket line, and assaults and violence ensued. They began early and continued from time to time during the three weeks of the strike

after the picketing began. All information tendered, all arguments advanced and all persuasion used under such circumstances were intimidation. They could not be otherwise. It is idle to talk of peaceful communication in such a place and under such conditions. The numbers of the pickets in the groups constituted intimidation. The name "picket" indicated a militant purpose, inconsistent with peaceable persuasion. The crowds they drew made the passage of the employees to and from the place of work, one of running the gauntlet. Persuasion or communication attempted in such a presence and under such conditions was anything but peaceable and lawful. When one or more assaults or disturbances ensued, they characterized the whole campaign, which became effective because of its intimidating character, in spite of the admonitions given by the leaders to their followers as to lawful methods to be pursued, however sincere. Our conclusion is that picketing thus instituted is unlawful and can not be peaceable and may be properly enjoined by the specific term because its meaning is clearly understood in the sphere of the controversy by those who are parties to it. We are supported in that view by many well reasoned authorities, although there has been contrariety of view. *Barnes & Co.* v. *Typographical Union*, 232 Ill. 424; *Franklin Union* v. *People*, 220 Ill. 355; *Philip Henrici Co.* v. *Alexander*, 198 Ill. App. 568; *Vegelahn* v. *Guntner*, 167 Mass. 92; *Jonas Glass Co.* v. *Glass Association*, 72 N. J. Eq. 653, s. c. 77 N. J. Eq. 219; *Jersey City Printing Co.* v. *Cassidy*, 63 N. J. Eq. 759; *Frank & Dugan* v. *Herold*, 63 N. J. Eq. 443; *Goldberg, Bowen & Co.* v. *Stablemen's Union*, 149 Cal. 429; *Pierce* v. *Stablemen's Union*, 156 Cal. 70; *Local Union No. 313* v. *Stathakis*, 135 Ark. 86; *Beck* v. *Teamsters' Union*, 118 Mich. 497; *In re Langell*, 178 Mich. 305; *Jensen* v. *Cooks' & Waiters' Union*, 39 Wash. 531; *St. Germain* v. *Bakery & Confectionery Workers' Union*, 97 Wash. 282; *Jones* v.

Van Winkle Gin & Machine Works, 131 Ga. 336; *Union Pacific R. R. Co.* v. *Ruef*, 120 Fed. 102; *Atchison, Topeka & Santa Fe Ry. Co.* v. *Gee*, 139 Fed. 582; *Stephens* v. *Ohio State Telephone Co.*, 240 Fed. 759.

A restraining order against picketing will advise earnest advocates of labor's cause that the law does not look with favor on an enforced discussion of the merits of the issue between individuals who wish to work, and groups of those who do not, under conditions which subject the individuals who wish to work to a severe test of their nerve and physical strength and courage. But while this is so, we must have every regard to the congressional intention manifested in the act and to the principle of existing law which it declared, that ex-employees and others properly acting with them shall have an opportunity, so far as is consistent with peace and law, to observe who are still working for the employer, to communicate with them and to persuade them to join the ranks of his opponents in a lawful economic struggle. Regarding as primary the rights of the employees to work for whom they will, and, undisturbed by annoying importunity or intimidation of numbers, to go freely to and from their place of labor, and keeping in mind the right of the employer incident to his property and business to free access of such employees, what can be done to reconcile the conflicting interests?

Each case must turn on its own circumstances. It is a case for the flexible remedial power of a court of equity which may try one mode of restraint, and if it fails or proves to be too drastic, may change it. We think that the strikers and their sympathizers engaged in the economic struggle should be limited to one representative for each point of ingress and egress in the plant or place of business and that all others be enjoined from congregating or loitering at the plant or in the neighboring streets by which access is had to the plant, that such representatives should have the right of observation, communica-

tion and persuasion but with special admonition that their communication, arguments and appeals shall not be abusive, libelous or threatening, and that they shall not approach individuals together but singly, and shall not in their single efforts at communication or persuasion obstruct an unwilling listener by importunate following or dogging his steps. This is not laid down as a rigid rule, but only as one which should apply to this case under the circumstances disclosed by the evidence and which may be varied in other cases. It becomes a question for the judgment of the Chancellor who has heard the witnesses, familiarized himself with the *locus in quo* and observed the tendencies to disturbance and conflict. The purpose should be to prevent the inevitable intimidation of the presence of groups of pickets, but to allow missionaries.

With these views, it is apparent that we can not sustain the qualification of the order of the District Court which the Circuit Court of Appeals made. That court followed the case of *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45, and modified the order of the District Court which enjoins defendants "from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets" by adding the words "in a threatening or intimidating manner." This qualification seems to us to be inadequate. In actual result, it leaves compliance largely to the discretion of the pickets. It ignores the necessary element of intimidation in the presence of groups as pickets. It does not secure practically that which the court must secure and to which the complainant and his workmen are entitled. The phrase really recognizes as legal that which bears the sinister name of "picketing" which it is to be observed Congress carefully refrained from using in § 20.

There remains to consider, so far as defendants Churchill and Cook, the ex-employees, are concerned, the

part of the decree of the District Court which forbade them by persuasion to induce employees, or would-be employees to leave, or stay out of, complainant's employ. The effect of it is to enjoin persuasion by them at any time or place. This certainly conflicts with § 20 of the Clayton Act. The decree must be modified as to these two defendants by striking out the word "persuasion."

The second important question in the case is as to the form of decree against the Tri-City Trades Council and the other defendants. What has been said as to picketing applies to them, of course, as fully as to the ex-employees, but how as to the injunction against persuasion?

The argument made on behalf of the American Foundries in support of enjoining persuasion is that the Tri-City Central Trades Council and the other defendants being neither employees nor strikers were intruders into the controversy, and were engaged without excuse in an unlawful conspiracy to injure the American Foundries by enticing its employees, and, therefore, should be enjoined.

It is to be noted, that while there was only one member of the unions of the Trades Council who went out in the strike, the number of skilled employees then engaged by the Foundries was not one-quarter of the whole number of men who would be engaged when it was in full operation. The works manager said that eighty or ninety per cent. of the employees were old men and that he assumed these men were members of various organizations. Other witnesses, members of the unions, testified that they had been employees of complainant in the previous fall. It is thus probable that members of the local unions were looking forward to employment when complainant should resume full operation and even though they were not ex-employees within the Clayton Act, they were directly interested in the wages which were to be paid.

Is interference of a labor organization by persuasion and appeal to induce a strike against low wages under

such circumstances without lawful excuse and malicious? We think not. Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild. It is impossible to hold such persuasion and propaganda without more, to be without excuse and malicious. The principle of the unlawfulness of maliciously enticing laborers still remains and action may be maintained therefor in proper cases,

but to make it applicable to local labor unions, in such a case as this, seems to us to be unreasonable.

The elements essential to sustain actions for persuading employees to leave an employer are first, the malice or absence of lawful excuse, and, second, the actual injury. The effect of cases cited as authority must be determined by an examination of the pleadings and facts to see how the malice or lack of lawful excuse was established, and whether there was not illegality present in the means used. Thus *Walker* v. *Cronin*, 107 Mass. 555, and *Thacker Coal Co.* v. *Burke*, 59 W. Va. 253, suits by an employer against members of a labor union in which the right of action for persuading was sustained, were heard on demurrer to the complaint. The element of malice was supplied by averment of the complaint, and was, of course, admitted by the demurrer. There are other cases in which the persuasion was accompanied by the intent to secure a breach of contract, or was part of a secondary boycott or had elements of fraud, misrepresentation or intimidation in it. *Perkins* v. *Pendleton*, 90 Me. 166, was a case of the latter kind. In *Lucke* v. *Clothing Cutters*, 77 Md. 396, it was held unlawful in a labor union to seek to compel an employer to discharge the plaintiff by intimidation, and it was said that the state law authorizing formation of trade unions to secure most favorable conditions for labor of their members was not a warrant for making war upon the non-union man or for illegal interference with his rights and privileges. A suit by an employee who seeks to hold a labor union liable for seeking his discharge by threatening to strike unless his employer discharges him, stands on a different footing from a mere effort by a labor union to persuade employees to leave their employment. There are in such a combination against an employee the suggestions of coercion, attempted monopoly, deprivation of livelihood and remoteness of the legal purpose of the union to better its mem-

bers' condition, not present in a case like the present. Without entering into a discussion of those cases which include *Brennan* v. *United Hatters of North America*, 73 N. J. L. 729; *Curran* v. *Galen*, 152 N. Y. 33; *Berry* v. *Donovan*, 188 Mass. 354, and *Plant* v. *Woods*, 176 Mass. 492, it is sufficient to say they do not apply here.

The counsel for the Steel Foundries rely on two cases in this court to support their contention. The first is that of *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229. The principle followed in the *Hitchman Case* can not be invoked here. There the action was by a coal mining company of West Virginia against the officers of an International Labor Union and others to enjoin them from carrying out a plan to bring the employees of the complainant company and all the West Virginia mining companies into the International Union, so that the Union could control, through the union employees, the production and sale of coal in West Virginia, in competition with the mines of Ohio and other States. The plan thus projected was carried out in the case of the complainant company by the use of deception and misrepresentation with its non-union employees, by seeking to induce such employees to become members of the Union contrary to the express term of their contract of employment that they would not remain in complainant's employ if union men, and after enough such employees had been secretly secured, suddenly to declare a strike against complainant and to leave it in a helpless situation in which it would have to consent to be unionized. This court held that the purpose was not lawful, and that the means were not lawful and that the defendants were thus engaged in an unlawful conspiracy which should be enjoined. The unlawful and deceitful means used were quite enough to sustain the decision of the court without more. The statement of the purpose of the plan is sufficient to show the remoteness of the benefit ultimately to be derived by

the members of the International Union from its success and the formidable country-wide and dangerous character of the control of interstate commerce sought. The circumstances of the case make it no authority for the contention here.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443, also cited, can have no bearing here. In that case, the International Association of Machinists, an unincorporated association, having a membership of more than 60,000, united in a combination to compel the complainant to unionize its factory, enforce the closed shop, the eight-hour day and the union scale of wages by boycotting the interstate trade of that company. They conducted in the City of New York a campaign of threatening the customers of the Printing Press Company, the trucking companies that carried its presses, and those who were engaged in the work of setting up such presses, with injury to them in their business, if they continued to deal with the Duplex Company or its presses. It was a palpable effort on the part of the International Association of Machinists to institute a secondary boycott, that is, by coercion, to use the right of trade of persons having nothing to do with the controversy between the Duplex Company and the Machinist's Union, and having no interest in it, to injure the Duplex Company in its interstate trade. This was decided not to be within § 20 of the Clayton Act, but was held, following the case of *Loewe* v. *Lawlor*, 208 U. S. 274, to be an unlawful combination in restraint of interstate trade. The *Hitchman Case* was cited in the *Duplex Case*, but there is nothing in the *ratio decidendi* of either which limits our conclusion here or which requires us to hold that the members of a local labor union and the union itself do not have sufficient interest in the wages paid to the employees of any employer in the community to justify their use of lawful and peaceable persuasion to induce those employees to refuse to accept such reduced wages

and to quit their employment. For this reason, we think that the restraint from persuasion included within the injunction of the District Court was improper, and in that regard the decree must also be modified. In this we agree with the Circuit Court of Appeals.

The decree of the Circuit Court of Appeals is reversed in part and affirmed in part and the case is remanded to the District Court for modification of its decree in conformity with this opinion.

MR. JUSTICE BRANDEIS concurs in substance in the opinion and the judgment of the court.

MR. JUSTICE CLARKE dissents.